

KAUA'I PLANNING COMMISSION
REGULAR MEETING
May 12, 2015

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Anderson at 9:05 a.m., at the Lihue Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Angela Anderson
Vice Chair Sean Mahoney
Mr. Louis Abrams
Mr. Wayne Katayama
Ms. Amy Mendonca
Mr. Kimo Keawe

The following staff members were present: Planning Department – Michael Dahilig, Leslie Takasaki, Jody Galinato; Deputy County Attorney Jodi Higuchi Sayegusa; Office of Boards and Commissions – Administrator Jay Furfaro, Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Anderson called the meeting to order at 9:05 a.m.

ROLL CALL

Planning Director Dahilig: You have six (6) members present, Madam Chair.

APPROVAL OF THE AGENDA

Chair Anderson: Okay, and approval of the agenda.

Mr. Dahilig: Madam Chair, the Department would recommend moving the Subdivision matter immediately after the Hearings and Public Comment period, and then moving the Ben-Dor closing arguments to the end of the agenda.

Chair Anderson: Okay. Do I have a motion?

Mr. Mahoney: Move to approve adjusted agenda.

Mr. Abrams: Second.

D.1.
JUN 09 2015

Chair Anderson: All those in favor? (Unanimous voice vote) Any opposed? (None) Okay, motion carries.

On the motion made by Vice Chair Mahoney and seconded by Commissioner Abrams to approve the adjusted agenda, the motion carried by unanimous voice vote.

MINUTES of the meeting(s) of the Planning Commission

Mr. Dahilig: Thank you Madam Chair. We do have three (3) minutes up for approval before the Planning Commission this morning. The Contested Case Hearing of March 10, 2015, the meeting of March 24, 2015, and the meeting of April 14, 2015.

Contested Case Hearing of March 10, 2015

Chair Anderson: Okay. Let's take each of the meeting minutes as separate motions. So I have a motion for the Contested Case Hearing that occurred on March 10, 2015.

Mr. Mahoney: Move to approve.

Ms. Mendonca: Second.

Chair Anderson: Okay, any discussion? (None) Alright. All those in favor? (Unanimous voice vote) Any opposed? (None) Okay, minutes are approved.

On the motion made by Vice Chair Mahoney and seconded by Commissioner Mendonca to approve the Contested Case Hearing minutes that occurred on March 10, 2015, the motion carried by unanimous voice vote.

Meeting of March 24, 2015

Chair Anderson: And on to the meeting minutes of March 24, 2015. Do I have a motion to approve?

Mr. Keawe: So moved.

Mr. Mahoney: Second.

Chair Anderson: Okay, any discussion? Okay, seeing none. All those in favor? (Unanimous voice vote) Any opposed? (None) Okay, motion carries.

On the motion made by Commissioner Keawe and seconded by Vice Chair Mahoney to approve the meeting minutes of March 24, 2015, the motion carried by unanimous voice vote.

Meeting of April 14, 2015

Chair Anderson: And onto meeting of April 14, 2015, can I have a motion?

Mr. Mahoney: Move to approve.

Mr. Abrams: Second.

Chair Anderson: Any discussion? Okay, seeing none. All those in favor? (Unanimous voice vote) Okay, I abstain as I was not present, and the motion carries.

On the motion made by Vice Chair Mahoney and seconded by Commissioner Abrams to approve the meeting minutes of April 14, 2015, the motion carried by voice vote, 5 ayes and 1 abstention.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Dahilig: Thank you Madam Chair. We are now on Receipt of the Items for the Record. We would like to add to the record this morning a Director's Supplement No. 3; these are conditional comments that came in after the posting of the agenda and the transmission of the meeting minutes.

Chair Anderson: Okay. Do I have a motion to receive?

Mr. Mahoney: Move to receive.

Mr. Abrams: Second.

Chair Anderson: Okay, all those in favor? (Unanimous voice vote) Any opposed? (None) Additional items have been received.

On the motion made by Vice Chair Mahoney and seconded by Commissioner Abrams to receive the items for the record, the motion carried by unanimous voice vote.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing

Class IV Zoning Permit Z-IV-2015-13, Use Permit U-2015-12, Special Permit SP-2015-3 to operate a resource recovery facility for green waste, construction & bulky materials, on a parcel situated along the mauka side of Kaumuali'i Highway in Kekaha, approx. 0.85 mile inland and 1 mile west of Kekaha Gardens Subdivision, further identified as Tax Map Key (4) 1-2-002: 008, and containing a land area of 12.34 acres = Shredco, LLC.

Mr. Dahilig: Thank you Madam Chair. We are now on Hearings and Public Comment. Item F.1., this is Class IV Zoning Permit Z-IV-2015-13, Use Permit U-2015-12, and Special Permit SP-2015-3. This is for the green waste, construction and bulky materials recovery facility in Kekaha; Tax Map Key (4) 1-2-002: 008, and containing a land area of 12.34 acres. Shredco is the applicant, Madam Chair. This is a continued hearing from the last meeting. We do have one (1) individual signed up for this agency hearing at this time.

Chair Anderson: Okay.

Mr. Dahilig: Myra Kaichi.

Myra Kaichi: Will the application be heard right after this? I can withhold my comments...

Mr. Dahilig: You do have the option to present testimony now, or when the application has come up.

Ms. Kaichi: I would prefer to be heard at the application.

Mr. Dahilig: Okay.

Ms. Kaichi: Thank you.

Chair Anderson: Is there anyone else who would like to give public testimony at this time regarding this matter? Okay, seeing none.

Mr. Dahilig: Madam Chair, given the election of the individual signed up for the agency hearing, I'd ask that this matter...the matter of closing the agency hearing be handled at the time this matter is taken up.

Chair Anderson: Okay.

New Agency Hearing

Mr. Dahilig: Okay. We do not have any New Agency Hearings this morning.

Continued Public Hearing

Zoning Amendment ZA-2014-1A: Amendment (Draft Bill No. 2498) to Chapter 8.6 of the Kaua'i County Code (1987), as amended, relating to bus stops for commercial development = Kaua'i County Council.

Mr. Dahilig: We do have a Continued Public Hearing. This is Zoning Amendment ZA-2014-1A, Draft Bill 2498; this is related to bus stops for commercial development. This bill did come down from the Kaua'i County Council and was received for hearing about a year and a half ago. There's a Supplemental Director's No.1 Report for the matter. Madam Chair, I would ask that the Commission open the public hearing at this time.

Chair Anderson: Okay. Is anyone else in the public here to comment regarding the Draft Bill 2498? Okay, seeing none.

Mr. Dahilig: Madam Chair, the Department would recommend, given the lack of testimony on this particular item, that the continued public hearing now be closed.

Chair Anderson: Do I have a motion from the Commission to close the public hearing?

Mr. Abrams: So move to close the public hearing.

Mr. Mahoney: Second.

Chair Anderson: Okay. Any discussion? (None) Okay, all those in favor? (Unanimous voice vote) Any opposed? Seeing none, the motion carries.

On the motion made by Commissioner Abrams and seconded by Vice Chair Mahoney to close the public hearing, the motion carried by unanimous voice vote.

New Public Hearing

Mr. Dahilig: Thank you, Madam Chair. We are now on New Public Hearing; we have no new public hearing scheduled for today.

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

Mr. Dahilig: And with regards to any other people that would like to elect to testify on any other agenda item on this agenda this morning, I do not have anybody else signed up to testify.

Chair Anderson: Okay. Is there anyone in the public that would like to give testimony on any matter that is on the agenda? This is according to HRS 92, Sunshine Law, you have the opportunity now to speak on any item. Okay.

Brett Barton: Could I just ask a question?

Chair Anderson: If you can approach the mic.

Mr. Barton: I just need to make sure I'm in the right place, concerning the ADU clearance. Am I in the right place?

Chair Anderson: If you can approach the mic and state your name for the record.

Mr. Barton: My name is Brett Barton. I'm just here to find out about the ADU clearance, whether I get...I was denied it, so I think I was told to come here and listen to what you guys are going to tell me.

Mr. Dahilig: Mr. Barton, your agenda item is number I.2., under General Business Matters for this morning. So your petition was received and the Commission is going to be acting on your petition based off of your submittal. So when we call the item, you'll have a chance to present your petition.

Mr. Barton: So I'm in the right place?

Mr. Dahilig: Yes.

Chair Anderson: Does anyone have any further public testimony on any agenda matter...on any agenda item? Okay, seeing none.

COMMITTEE REPORTS

Subdivision

Mr. Dahilig: Thank you, Madam Chair. Per the amended agenda, we are now on Committee Reports; the Subdivision Committee.

Mr. Mahoney: Madam Chair, Subdivision Committee report one (1) item for business; final subdivision action S-2008-16, Melvin Soong/Clarence Soong, TMK (4) 4-6-015:048 approved 3-0. Meeting was adjourned 8:34 a.m. That's all I have to report for the Subdivision Committee.

Chair Anderson: Okay. Do we have a motion to approve the Subdivision meeting minutes?

Mr. Abrams: So moved.

Chair Anderson: Okay, do we have a second?

Ms. Mendonca: Second.

Chair Anderson: All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries.

On the motion made by Commissioner Abrams and seconded by Commissioner Mendonca to approve the Subdivision meeting minutes, the motion carried by unanimous voice vote.

CONSENT CALENDAR

Status Reports

2015 Annual Status report (3/12/15) from Avery H. Youn, Architect for Project Development Use Permit PDU-2008-11, Class IV Zoning Permit Z-IV-2008-12 and Use Permit

U-2008-10, involving the development of a 34-unit multi-family residential condominium project and commercial complex containing approx. 45,000 sq. ft. of commercial/retail space, Tax Map Key 2-8-008: 001, Kōloa, Kauaʻi = Kōloa Village, LLC (formerly Village at Kōloa Town, LLC).

Director's Report(s) for Project(s) Scheduled for Agency Hearing on 5/26/15.

Class IV Zoning Permit Z-IV-2015-14 and Use Permit U-2015-13 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the eastern side of Pelehu Road in Kapaʻa, situated approx. 1/8-mile south of its intersection with Kawaihau Road and further identified as 4698 Pelehu Road, Tax Map Key 4-6-016: 063, and containing a total area of 15,539 sq. ft. = Daniel G. & Patricia Hempey.

Class IV Zoning Permit Z-IV-2015-16, Use Permit U-2015-15 and Special Permit SP-2015-4 to operate a temporary asphalt batch plant facility on a parcel situated along the mauka side of Kaumualiʻi Highway in Waimea, and Variance Permit V-2015-2 to deviate from the maximum height limitation within the Agriculture District, approx. 0.25 mile inland and 0.75 mile west of Waimea Canyon Middle School, further identified as Tax Map Key 1-2-006: 009, and affecting a 2-acre portion of a larger parcel = Maui Asphalt X-IV, LLC.

Mr. Dahilig: Thank you, Madam Chair. We are now on Item G, which is the Consent Calendar. We do have one (1) status report; this is from Kōloa Village, LLC related to PDU 2008-11, Class IV Zoning Permit Z-IV-2008-12, and Use Permit U-2008-10. As well as a Director's Report scheduled for agency hearing at the next Commission meeting; this is for Class IV Zoning Permit Z-IV-2015-14, Use Permit U-2015-13 related to a bed and breakfast in Kapaʻa. Applicants are Daniel G. and Patricia Hempey. And Class IV Zoning Permit Z-IV-2015-16 and Use Permit U-2015-15 and Special Permit SP-2015-4 related to a temporary asphalt batch plant in Waimea; the applicant is Maui Asphalt, LLC. So that's the set for agency hearing and that's the three (3) items for the Consent Calendar this morning, Madam Chair.

Chair Anderson: Does the Commission want to take anything off of the Consent Calendar? If there's a motion, I'll entertain that. Okay. If not, do I have a motion to approve the Consent Calendar?

Mr. Mahoney: Move to approve the Consent Calendar.

Mr. Abrams: Second.

Chair Anderson: Okay. Discussion? Seeing none. All those in favor? (Unanimous voice vote) Okay, motion carries.

On the motion made by Vice Chair Mahoney and seconded by Commissioner Abrams to approve the Consent Calendar, the motion carried by unanimous voice vote.

EXECUTIVE SESSION

Mr. Dahilig: Thank you, Madam Chair. We do not have any executive sessions for this morning.

GENERAL BUSINESS MATTERS

Petition to Appeal the Decision of the Planner Director by *Nadine Begley* concerning Additional Dwelling Unit Recertification Application (TMK 46011056) filed 4/27/15. Contested Case No. CC-2015-09.

Mr. Dahilig: We are now on Item I, which is related to petition to appeal the decision of the Planning Director by Nadine Begley concerning an additional dwelling unit certification application at TMK 46011056 filed 4/27/15. Madam Chair...oh I'm sorry, this is Contested Case Hearing No. CC-2015-09. The Director would recommend this matter be referred to the Hearings Officer for initiation of the Contested Case Hearing.

Chair Anderson: Is Nadine Begley in the public here to speak on her behalf? Okay, seeing none. As we have a recommendation from the Clerk of the Commission, do I have a motion regarding referring this matter to the Hearings Officer?

Mr. Mahoney: Madam Chair, move to refer this matter to the Hearings Officer.

Chair Anderson: Okay, do I have a second?

Mr. Abrams: Second.

Chair Anderson: Okay, any discussion? (None) All those in favor? (Unanimous voice vote) Any opposed? (None) Okay, motion carries.

On the motion made by Vice Chair Mahoney and seconded by Commissioner Abrams to refer Contested Case No. CC-2015-19 to the Hearings Officer, the motion carried by unanimous voice vote.

Petition to Appeal the Decision of the Planning Director by *Brett Barton* concerning Additional Dwelling Unit Recertification Application (TMK 25002046) filed 4/10/15. Contested Case No. CC-2015-8.

Mr. Dahilig: Thank you, Madam Chair. We are now on Item I.2., petition to appeal the decision of the Planning Director by Brett Barton concerning the additional dwelling unit recertification application at TMK 25002046; this is Contested Case Hearing No. CC-2015-8. Again, the Clerk of the Commission would recommend that this matter be referred over to the Hearings Officer for disposition.

Chair Anderson: Okay. Mr. Barton, would you like to approach to address your appeal to the Planning Commission?

Mr. Barton: Yeah, I guess...

Chair Anderson: And just please state your name for the record.

Mr. Barton: My name is Brett Barton. I feel that I did everything that I was required to do to get the ability to build on the ADU that I have...I mean, to build an ADU. I pulled all the house plans, which obviously expire after 180 days if you don't start it. I did all that; I had the plans. I think my only problem was...when I went down to Planning or Building to find out how this was all panning out, I was told that I had missed this deadline by three (3) weeks. My main problem was that I never heard of any of this; I was just down there just on a fluke, I guess, just to find out what was going on. So, I guess my problem is, is I really felt that...I think they told me that they had said on the radio that this was coming up, and I think that you guys posted it in the Garden Island Newspaper; I never heard any of it. I just felt that maybe I should have got at least a certified letter. All I would've had to do was sign something and pay \$250, I would have been glad to do that, but now I'm being told "oh yeah, you can't build your ADU now" and I just think it's unfair. If I would've heard, I would've paid \$2,000 to do it; and I missed the deadline by three (3) weeks. I think that's my main problem with it; it is what it is.

Chair Anderson: Thank you for appearing today. What's before the Commission, to provide you the...your rights in terms of the law to exactly set forth for the record, why you feel this isn't fair or what we have is the Contested Case procedures. It's been recommended by the Director that this be deferred to a Hearings Officer to allow you that time to present evidence. Do you have any opinion on whether or not this should be referred to a Hearings Officer?

Mr. Barton: Yeah, yeah I would like to be able to state my case, if that's what you're asking me.

Chair Anderson: Okay, so you will have the opportunity to either state it before a Hearings Officer or the entire Commission. So just in terms of...for the economy of the Commission, I'm explaining the process so you understand what's before us is to decide whether we hear it as a whole body, or if a Hearings Officer will hear the case, give the recommendations, and then we'll make the decision. So I wanted to make sure that you understand the process and what's being decided today.

Mr. Barton: What are you asking me? Are you going to decide it now or decide it somewhere else? I'm sorry, I don't understand.

Chair Anderson: Oh, okay. So there's a contested...since you appealed the decision, we're in a contested case. And so the Commission has the authority to hear it as the contested case; it wouldn't be heard today, we'd have to schedule it at another time; or we can defer it to a Hearings Officer that hears your evidence, and then makes the recommendations. And so I'm asking if you have any opinions as to the...whether or not we defer it to a Hearings Officer or if we hear it as a body.

Mr. Barton: No. It's fine.

Chair Anderson: Okay, thank you.

Mr. Barton: Thank you.

Chair Anderson: Do I have a motion from the Commission?

Mr. Keawe: Yeah, I move that Contested Case No. CC-2015-8 be referred to a Hearings Officer.

Mr. Mahoney: Second.

Chair Anderson: Okay, do I have any discussion? Okay, seeing none. All those in favor? (Unanimous voice vote) Any opposed? (None) Okay, thank you very much. Mr. Barton, you will be contacted from the Hearings Officer to set up a schedule for the actual hearing.

Mr. Barton: Okay, thank you very much.

Chair Anderson: Okay, thank you.

On the motion made by Commissioner Keawe and seconded by Vice Chair Mahoney to refer Contested Case No. CC-2015-8 to the Hearings Officer, the motion carried by unanimous voice vote.

Petition to Appeal Notice of Violation and Order to Pay Fines, filed September 10, 2014 = Greg Allen, Sr.

Mr. Dahilig: Madam Chair, we are on Item I.4., which is a petition to appeal notice of violation and order to pay fines. This is specifically related to the Notice of Appeal of Violation and Levy of Fines on 3/18/15 from Gregory W. Kugle. This is the one (inaudible) in March. Madam Chair, we would ask that this particular appeal... There are two (2) separate appeals that are before the Planning Commission; this is the second one. The reason why it's titled in this manner is because the Applicant has tried to, by nomenclature, consolidate the matters, but they are actually two (2) separate matters; and so, it just needs a separate action from the Planning Commission at this time. I would ask that the Planning Commission, as Clerk of the Commission, refer the notice of appeal in violation and Levy of fines as dated 3/18/15 to a Hearings Officer for disposition.

Chair Anderson: Okay.

Mr. Dahilig: I do not believe Counsel is here for this, for Mr. Allen at this time.

Chair Anderson: Okay. We'll just make a call. Is there a representative or Mr. Gregory Kugle or Mr. Allen here to address this matter? Okay, it's noted that the party is not here. Do I have a motion from the Commission? Again, the Clerk has recommended referral of this matter to a Hearings Officer.

Mr. Abrams: Move to refer to a Hearings Officer, both appeals.

Mr. Dahilig: Actually, only the...only this one, the 3/18 would be...

Mr. Abrams: Okay, okay, 3/18 one, Gregory Kugle.

Chair Anderson: Okay, do I have a second?

Mr. Mahoney: Second.

Chair Anderson: Any discussion? (None) Okay, all those in favor? (Unanimous voice vote) Any opposed? Seeing none, the motion carries.

On the motion made by Commissioner Abrams and seconded by Vice Chair Mahoney to refer the notice of appeal of violation and Levy of fines dated 3/18/15 to the Hearings Officer, the motion carried by unanimous voice vote.

NEW BUSINESS

Class IV Zoning Permit Z-IV-2015-13, Use Permit U-2015-12, Special Permit SP-2015-3 to operate a resource recovery facility for green waste, construction & bulky materials, on a parcel situated along the mauka side of Kaumuali'i Highway in Kekaha, approx. 0.85 mile inland and 1 mile west of Kekaha Gardens Subdivision, further identified as Tax Map Key (4) 1-2-002: 008, and containing a land area of 12.34 acres = Shredco, LLC.

Mr. Dahilig: Thank you, Madam Chair. Let's circle back to Shredco permit, and let me make the call for Item M, which is New Business; Class IV Zoning Permit Z-IV-2015-13, Use Permit U-2015-12, and Special Permit SP-2015-3 at Tax Map Key (4) 1-2-002, parcel 8. Again, this is the Shredco application, the Director's Report was received on 3/24/15, and the hearing was continued from the first meeting in April. Madam Chair, Jody is our Planner on the matter. She did present, to the Commission, her findings on the application. The reason why we asked for the deferral...the Department asked for the deferral on this particular item was due to the testimony of the Agribusiness Development Corporation and numerous community members concerning the access on the site. I believe we do so have one (1) individual that would like to, I guess, testify as part of the continued agency hearing, so I will leave it up to the Commission whether to take that now or continue with the discussion with the Planner.

Chair Anderson: Okay, if we can hear from the Planner first.

Jody Galinato: Good Morning Madam Chair, members of the Commission. What I have in the Supplement No. 3 are issues relating to the access, comments from Public Works, and concurrence from the State Department of Transportation, and then testimony objecting. And just for the record, the date of the receipt of the letter from ADC was May 7th. I've also passed out a bag of the crushed aggregate and some photos that were submitted this morning. At your last meeting, you requested to see what kind of trucks and equipment Shredco was going to use, so they brought that and it should be going around for your review.

And then in your Supplement No. 2, which was received in your agenda packets, I have the State Historic Preservation Division letter and also a letter from the Applicant addressing some concerns; then I've summarized the Staff recommendation with an addition of Condition No. 11, which you'll find.

Chair Anderson: Okay. Given the fact that we had additional information given to us at this hearing, I'd like to just give the Commission a chance to review the materials for a few minutes.

Mr. Dahilig: And Madam Chair, I think one of the items in particular that may need some articulation is, I guess, Ms. Kaichi's testimony on behalf of the ADC; that seems to be, I would assume to be, dispositive to the Commission concerning how to handle this particular application. So maybe after review, you may want to, maybe, provide her more than what is typically allowed as the three (3) minute testimony to kind of explain her testimony as presented.

Chair Anderson: Okay. Does the Commission need a recess to review the information that's before them? (Yes, please) Okay, so we'll go ahead and take a ten (10) minute recess at this time.

The Commission recessed at 9:27 a.m.

The Commission reconvened at 9:35 a.m.

Chair Anderson: Call this meeting back to order. I believe that we have public testimony that was reserved for this time.

Ms. Kaichi: Good Morning Madam Chair, members of the Commission. Thank you for giving me this opportunity to address you. I'm Myra Kaichi, Deputy Attorney General and attorney for the Agribusiness Development Corporation. I highly doubt that I'll need three (3) minutes of your time. The Applicant and ADC have been in negotiations over the newest recommendation; that would be the access, and are very close on all the main points. I can't take credit for this list, the Applicant Lorna Nishimitsu sent this to us, and we're in agreement for the most part with all of the major issues.

Again, Recommendation No. 11 from Staff that Shredco can use the Old Government Road; that it can also use the farm road, an internal road, within the fields of the ADC properties which is just going to be more of a direct route and I'm pretty sure you have the maps in front of you. Access to the roads will be limited to Shredco's vehicles, the County's vehicles, and any of their contractor's vehicles; in other words, there will be no public access or commercial access through the internal roads.

Shredco will secure insurance naming the Agribusiness Development Corporation and the Kekaha Agricultural Association, our common infrastructure maintenance operator; they take care of our roads, among other things, as additional insured. And these insurances will probably be your typical contracting insurances like commercial general liability insurance, automobile insurance to the extent employees are involved, any type of employment insurance that's

required by law. The amounts, I think, are pretty standard, but we will continue to negotiate the minimum amount of coverage required.

Shredco will do quarterly maintenance of the roads, and with that they can work with the KAA, the co-op, on what's needed and how much of it is needed; at this point it's quarterly cover, gravel cover, to the extent it's worn out. Shredco will water the farm road, the internal farm road, to mitigate dust. We are in some agreement as well, the dust or any contaminants around the area, I think to the extent they can be controlled with water, will be handled by Shredco as well.

Shredco is also going to be requesting water from the ADC and we have directed them to the co-op, KAA, to discuss how they get water, how they access the water; whether they...I just learned this morning...whether they can extend a transmission pipe, a pressurized transmission pipe, or whether they go to the ditches to fill. We'll allow the KAA and Shredco to work those details out and just let ADC know. Again, ADC as the landowner will have final approval of those items.

In response to Recommendation No. 11, all of this will be memorialized in an agreement and I imagine the Commission is requiring that it be submitted to the Commission for approval as well. So that for the most part addresses ADC's first and sixth comments in our testimony.

Chair Anderson: Does the Commission have any questions?

Mr. Keawe: How soon do you think this agreement will be memorialized?

Ms. Kaichi: Depends on the Staff schedule, but I imagine within a few months.

Mr. Keawe: So both parties in principle agree?

Ms. Kaichi: Yes. This also requires the co-operative, the KKA's agreement. I think they have their own procedures for their members to review and approve.

Mr. Keawe: So there are additional signoffs that are required as part of the agreement?

Ms. Kaichi: Yes. I believe the co-op meets once a month, and ADC meets once a month; I'm not sure if this has to go before the whole ADC Board, but yes, I still think it's within a couple of months.

Mr. Keawe: So couple months?

Ms. Kaichi: I think. But we're government, so don't hold us to it. (Laughter in background)

Chair Anderson: Okay. Any other questions?

Mr. Katayama: In the Director's Report published back in March, one (1) of the statements made is "the desired use would not adversely affect the surrounding property". Has the proposed

use been signed off by the tenants that occupy the surrounding property? And does the co-op also agree with there's no adverse impact?

Ms. Kaichi: The co-operative and ADC have been kept apprised of these activities and at our last meeting, where some of the objections were raised, much of them surrounded or involved those types of activities and the impacts on the surrounding properties. But since then, the Applicant has provided us with their Department of Health application for their Solid Waste Permit, which addressed many of these issues. At this time, other than resolving the water issue, resolving the access issue, and potential liability issue, those matters have been met to our satisfaction. It seems the co-op also has not...they didn't file any opposing testimony today, so it appears that they are okay as well.

Mr. Katayama: In the approval process, the co-op will approve a membership? What's the relationship between Shredco, co-op, ADC?

Ms. Kaichi: ADC is the manager of the property, not quite the owner; the State is the owner, but ADC has jurisdiction over it. The co-operative has license from the ADC to maintain all of the infrastructure, including the roads, the ditches, the drainage canals, the ravines, the electrical transmission lines, and the hydroelectric power plants. The tenants all have licenses from ADC and they're also members of this co-operative, who has the license for the infrastructure and a kind of operating agreement. We did it pursuant to a memorandum of agreement. Shredco currently is a subtenant of one of the existing licensees, Sunrise Capital. And as its own owner now, as the Kaeo's have their own parcel, they're now a neighbor with a business proposition. Not all farmers on the ADC lands are members of the co-op, some have something called a "non-member subscription agreement", and it's another contractual arrangement whereby these possessors of the land are entitled to receive water. But the best source for that kind of information, if you want confirmation, is through the KAA; that's my understanding of their relationships. I'm not sure what kind of relationship Shredco would have. My guess, as I sit here today, would be that they would also be a non-member subscriber; primarily because they're not farmers. I don't know that they can be a member under the agricultural co-op statute, they might destroy the agricultural nature of the co-operative, but they certainly can receive water because other non-members receive water as well.

Mr. Katayama: Well I think the challenge here is that we're granting a Special Use Permit to Shredco, which is not a farming organization as part of the...whatever structure there is in place. And that to me becomes a little awkward because the entire intent of that area was to create an agricultural activity.

Ms. Kaichi: It's a tough decision.

Mr. Katayama: I think it's more of the form because the Special Use Permit then now runs with that land that we've granting the use for, and to the extent that Shredco's only nexus would be, you know, through an ownership position or partnership position... That's what I don't understand is what is the legal entity that binds into the co-op and into the activity of the Kekaha region.

Ms. Kaichi: I'll leave the legal opinion to your Counsel, but the only relationship that ADC intends to enter into with Shredco is a contractual one by agreement.

Mr. Katayama: And what about the co-op?

Ms. Kaichi: I can't speak for them as well, but I believe they're in the same position; they have the same position as the ADC. But that is a good segue, if I may, into ADC's request for cover or indemnity or insurance in the event, in the unlikely event, of any event giving rise to liability.

Chair Anderson: I think at this time I'd like to hear from the Applicant, if there's no further questions.

Deputy County Attorney Jodi Higuchi Sayegusa: Just to clarify for now, with regards to the last comment made about the request for indemnity, so this body is not in a position to...should you consider, you know, inputting or recommending indemnification, that has to be approved by Council, so it's not really something that we could set today. Just to clarify that, that was regarding the Recommendation 10, requesting that the County, as a beneficiary, indemnify the State.

Also, at this point, this Use Permit, Special Permit, there's no direct, you know, benefit, you know, through the permitting of the type of use that I can see. I'm not sure...that might be addressed if there's any existing contracts with Shredco, you know, with the County, but that's something a little separate.

Mr. Abrams: Madam Chair, I've got some questions. I'm not sure whether...I guess it really doesn't matter, one way or the other because either one of them could probably answer it, but... My understanding is that Shredco has access down the Old Government Road, that's provided by virtue of owning that parcel, right?

Lorna Nishimitsu: That's correct. The 12 acre parcel that is the subject of this application is not part of the lands that were given to ADC by executive order from the Board of Land and Natural Resources; it's an exclusion from those lands. The original owner was a grant by the State, or the territory, to Augustus F. Knudsen. So it's always been in private ownership; there's no relationship with ADC because the ownership is separate. The owner of that 12 acre parcel is not tied into any limitations on use that ADC might impose upon its tenants. The only connection is that it's kind of surrounded on three (3) sides by the ADC lands, it has an easement for access and utilities over Old Government Road, which is part of the lands that were EO'd by the Department of Land and Natural Resources over to ADC; because you cannot landlock parcels and Old Government Road connects ultimately to Kokee Road.

If an agreement cannot be reached with ADC about the terms and conditions of using an internal farm road, Shredco is aware that it is limited to using Old Government Road and Kokee Road, which are its right of access. Although as Myra correctly noted, in the past month we've become...we've gotten quite close to working out the terms and provisions of an agreement. The Applicant did receive the latest Director's Report Supplement No. 2 which contains proposed conditions with which it largely concurs. For clarification however, proposed

Condition 11 prohibits the commencement of any operations until we have written approval from the fee owner of the access easement, which I believe is ADC, to effectuate this permit has been secured by Shredco. If we can never reach an agreement with ADC, we would ask that the permit be in place and activated because he does have access and it would only be subject to receiving the companion Department of Health permit for the operations because he can't start without Department of Health, he can't start without you.

We attempted after the last hearing to submit photographs to kind of give you a perception of what's happening out there. We fully recognize that that yellow road that is shown on the aerial photograph that kind of hits Kaumuali'i Highway at mile marker 28 is fully within the control of ADC. Shredco does use it right now under the sublicense because Shredco is sublicensing 15 acres in a field owned by ADC to do green waste processing. So there is access; he has keys to the gate, he has to go in there and process this green waste, the green waste benefits the tenants of ADC because the mulch is spread out on the fields, so he is also...the tenants are also his customers. It's almost incestuous in a way because of his presence on the ADC lands, and now he's the owner of an independent 12 acre parcel.

One of the questions at the last meeting was "what's going to happen if there's a fire?" Shredco is the only tenant on the ADC lands that owns a water truck, which doesn't only spray, it also has hoses; and we sent you photographs of that water truck. The water truck will be available for firefighting in the unlikely event that it happens. We were kind of joking outside with the Attorney for ADC, you know well the tenants don't have water trucks, so what if one of their equipment caught fire. Basically, the tenants would have to rely on the County Fire Department or if Danford was available, they might end up having to call on him to help them deal with equipment or vehicle fire.

Without an agreement with ADC, we understand we cannot use their water; that's a given because that would be part of the right of entry they give us to use the road for access. So in the meantime, Shredco has already commissioned the services of a consultant to get a Well Permit from the State Water Commission because that will be a source for him to use his own water in the event ADC water is not available for their operations.

We did submit the gravel or the aggregate only because there was a question about the size. This is the kind of material that, if we reach an agreement with ADC, it's going to be laid down to...it helps to keep the dust down, but it also helps prolong the life of equipment, vehicles, etc. because the roads can, if it's just hard packed dirt, become poorly rutted. It's his equipment he wants to protect in particular, but...and the side benefit is that everybody else who's using that one farm road or Old Government Road will have the same protections that his vehicles will be having.

As Ms. Kaichi pointed out, if we do reach an agreement with ADC, Shredco is poised to provide the quarterly maintenance, which would include grading...because he's got all the equipment...grading, leveling, and filling the farm road and Old Government Road. He's not obligated to do Old Government Road because he has a right to use it, but he's willing to do it because it's for self-preservation purposes.

One thing that we do have a problem with is ADC's recommendation that Shredco be obligated to secure an Environmental Site Liability Insurance Policy. The operations that Shredco is involved in is processing materials that are in everybody's household; bulky items, household bulky items, the asphalt, the concrete. So when we asked Ms. Kaichi what environmental concerns are you really worried about? And it's like petroleum products, I guess, from our client's vehicles which are the same vehicles and equipment that are on the 15 acre site because that's where the green waste is being processed. So to obligate Shredco, which is going to berm its property for its use because it's not doing pure ag, to secure insurance that will protect ADC lands from Shredco's operations kind of begs the question about what protections Shredco, on its 12 acres, will be given from whatever environmental issues might be occurring on the ADC lands that surround the 12 acre parcel. That's why we would ask this Commission not to impose the...we're happy to provide general liability insurance, but not this specialized form of insurance to protect neighbors from perceived harms where the Shredco parcel isn't protected from the same perceived harms from all the lands that surround it.

Danford is here, if there are any questions that you have and in particular, the technical questions you know; what the equipment does, how much horsepower does it have, you know, what materials get thrown into it. And Danford has been...is a firefighter basically; he will be retiring at the end of this month after a fifteen (15) year career. So as far as firefighting goes, he's an asset to his own business and hopefully he can prove to be an asset if there's a disaster on the lands that surround him, so I would be happy to turn the mic over to him now.

Chair Anderson: Does the Commission have questions for the Applicant?

Mr. Keawe: Madam Chair, can I? Can you tell me a little bit about the (inaudible) things like furniture and those types of things that you're going to grind up, once you grind it...I know there's the compaction factor in doing that...so what does it look like when it's done? Are you talking about just shreds of things? Or how far do you, basically, take that material down? The issue was putting it back into the landfill and if you did it in bulk, obviously that's going to take up more space than if you shredded it and compacted it, but what does it look like? Does it look like sawdust or...?

Danford Kaeo: Danford Kaeo for the record. The yellow...the picture of the yellow machine that you have in your packet is a primary shredder. The purpose of that machine is to take bulky items and primarily reduce its bulkiness down to an 8-inch minus size material, which can later on be sent to the landfill and their compacting equipment can satisfactorily meet the consultant's requirements of 1,000 pounds per cubic yard. So the whole intent of this application is to help assist the County in meeting its integrated solid waste management requirements that are spec'd out in that plan. So that's the size of the output on that machine.

Mr. Keawe: Okay, and then a little bit about the rocks; so basically that's going to be used for fill within that ADC area? All of the tenants, the road accesses to...once you have a *puka* there, you're going to put it in and...a little bit about that. How do you...?

Mr. Kaeo: Yeah, not all the roads like Lorna mentioned. We do service some of the tenants in the KAA, which is Syngenta and Pioneer. We found out that through the contracts and the

services that we provide that they have to maintain their internal farm roads, which are separate from the KAA Management. We have been approached as we use these roads to help harvest their corn that a lot of these roads needs to be maintained, so this is another reason why we're applying for this Special Use Permit. Majority of the use from the concrete recycling will be used in the general area, but will be made available for the public. We do understand that the County has recently permitted one (1) site for concrete recycling here in Līhu'e, and we're looking to open the Westside region so that a lot of the people...we can service a lot of people on the Westside of the island; as well as, we see a recognized use for some of that on this side, due to the agricultural businesses.

Mr. Keawe: Thank you.

Chair Anderson: Any other questions?

Mr. Abrams: Yes. Danford, you're bringing in concrete?

Mr. Kaeo: Correct.

Mr. Abrams: From outside areas. Is that just standard large trucks that we would see carrying dirt, shall we say, or...?

Mr. Kaeo: Correct. Some of the pictures that we've sent earlier show some of the tandem trucks that are used. We have roll-off bins that can be used, and set in place for contractors to dispose and segregate that type of trash, so it does not enter the landfill. We understand that the County's goal in 2015, it's soon to pass, which will be banning concrete and asphalt equipment from entering into the landfill. So yes, the tandem trucks and the roll-offs will be used in trying to help the County achieve their goals of diversion.

Mr. Abrams: Thank you.

Chair Anderson: Any other questions from the Commission? I have a question; this may be best addressed to your Counsel. There was discussion that the...sounds like the contracts for the agreement to use the access, the direct access road, is going to be dependent on agreement from the KAA, as well for water. I just wanted to know, just in terms of the conversations...what we've had before us is that KAA is objecting to this application, and so if there's other information that you have that would suggest that you are able to work out an agreement with them.

Ms. Nishimitsu: Mr. Codiga, who represents KAA and who testified at the last meeting, has been linked in on the exchanges between myself and Ms. Kaichi. They were also sent a copy of the permit data that would go to the Department of Health so that Shredco can get the Department of Health's permit; which, as I explained, is necessary before he can even start his operations. What Mr. Codiga said was that they're not coming in to oppose any further, so my take on that, and Ms. Kaichi can correct me if I'm wrong, is that we will have a three-party agreement or we have to work on a three-party agreement, and KAA looks like it's on board with what is happening; especially since there was a proposal by Shredco to take some of the burden

of the Old Government Road maintenance and at least one (1) of the farm road maintenance off of the bailiwick of KAA, which is costly to them. So they seem to be satisfied with what KAA was willing to offer. Like I said, if water is a problem, Shredco will have its own source. Of course it's easier to use irrigation water for stuff, you know...because the well water may be close to potable and it would be a shame to use that for sprinkling on the green waste so that it can deteriorate faster, (inaudible) a faster rate. I think part of this was driven, or the change in opposition, may have been driven by the fact that having a use such as proposed by Shredco may be important in everything that's happening out there in the Mānā plains; especially given a challenge about the water diversions that take the water out of one valley and have been moving it to farming in the Kekaha area where ADC is. There's a desire to bring in allies to contribute more uses, other than agriculture, other than hydroelectric, and get something like a recyclable operation out there that can use some of the water also.

Chair Anderson: Okay.

Mr. Dahilig: Given the ongoing discussions between yourself, Agribusiness Development Corporation, and the KAA, it's apparent to the Department's standpoint that these discussions are still kind of in its nascent stages. A lot of the mitigation that I think the Department is concerned about is going to flow directly from whatever agreements, if they are executed, would come as an effect of whatever's agreed upon; things like the water, things like the road, etc. Given that these discussions still need to go on, is the Applicant amenable to having this application, by the time for action by the Commission, waived until such time as these mutually agreeable mitigation measures can be agreed to by private agreement, so that it can come back to the Commission and actually either fold them in or have the Commission understand what all the parties are agreed to at this point. Again, we don't have a KAA individual here, and from what we're hearing from the AG, as well as yourself, at this juncture a lot of these things are conceptual in nature and not agreed upon. I think that would give, at least the Department and some of the Commissioners, some ease that these issues that are being raised as concerns are being handled through private agreement, rather than through Commission condition. So what I guess...would your client be amenable to waiving the time to actually have this stuff be executed and come back at that juncture and ask for final consent from the Commission?

Ms. Nishimitsu: I think our concern on that is that without the right to use the land for the desired purpose, Department of Health may not act on the permits for the operation. And if we never reach an agreement with ADC and KAA, we realize we do have our own access on Old Government Road, we will have our own source of water, so there won't be any linkage with KAA and ADC. We hate to have our...your action on this application link to an agreement with a private party that might never come to fruition; I think that's a concern we have.

Mr. Dahilig: And I guess if that impasse is reached, then certainly you can come back to the Commission for that...you know, just thinking two (2), three (3) steps down the road, that if it does reach that level of impasse, that can be something that's notified to both the Department and the Commission. I think the concerns are more than just the use in a silo, rather you're looking at, and as some of the Commissioners made comments on, concerns related to what are the impacts beyond the four (4) corners of the lot. I think from what we've heard between the AG, as well as what you've mentioned, some of even those concerns are being entertained as

mitigated measures as part of these private agreements. I can't speak for the Commission, but if the...I think from the Department's philosophy if those things can be flushed out beyond the four (4) corners concerns, that should be given the time to mature.

Ms. Nishimitsu: Okay, I think from Shredco's perspective, they cannot submit a final application to Department of Health until they get land use approvals. Given that we're looking at a three-party agreement...well we've agreed in concept to certain generalized issues, I know that when it comes to reducing things to writing, agreements can fall apart. And until everybody has signed off, there's no guarantee that Shredco will have the right to use the farm road or the ADC/KAA water for its operations. Because of the inability to move forward with the Department of Health application, there's a concern on Shredco's part; it's like if we give an open-ended extension of time to take action and then we are not able to reach an agreement with KAA or ADC, and we ask to be put back on the agenda, when is that going to happen and how much time has he lost with moving forward with Department of Health. I think it kind of puts us in a...we're not sure where we're going to be at that point; I think is the concern.

Chair Anderson: If you can clarify, you spoke...say an agreement cannot be reached with ADC and KAA, and your plan for access would be to use the Old Government Road; and then you mentioned that you will have water. Do you have water access now?

Ms. Nishimitsu: Not to their water. They commissioned a consultant to dig a well, to get the well permits.

Chair Anderson: Yeah, but in terms of those that you've applied for that. But you don't have the permits at this time?

Ms. Nishimitsu: We don't have the permit yet.

Chair Anderson: Okay, so you don't have access to water now?

Ms. Nishimitsu: Not yet.

Chair Anderson: Okay.

Mr. Dahilig: I guess in the contrary, and this is what...from you giving this new information concerning these three-party negotiations, would the Applicant be amenable to a condition that requires such an agreement be at least reached or an impasse be declared before activities in the parcel begin? I think that's an alternative, but it also gives some...it does open yourselves up to other, kind of, uncertainties I would say. I think what, at least from a Departmental standpoint, it would be our preference and what we would recommend to the Commission that if this stuff can be worked out without a litany of Commission conditions that was probably in everyone's best interest. But to just try to negotiate out those three-party agreements right here, right now on the floor from a mitigation standpoint would not serve, I think, the Commission's time and effort at this point.

Ms. Nishimitsu: So the...if the Commission were so inclined, you mean having...and if there's approval that the permits would be conditioned on not commencing operations until several items are in place; including, but not limited to the Department of Health permit obviously, and secondly either a three-party agreement or a determination by the Applicant that it is not able to enter into an agreement that is satisfactory and that it will be limited to its own water, its own access.

Mr. Dahilig: I guess and that's where the loose end is because again, some of the mitigative elements that could be employed to try to dampen the impact of this operation may be folded into those three-party agreements. So without having the understanding of what the three (3) parties agree to as the mitigative measures, it seems limiting to have a list of condition precedence to actually trigger something down the line that says okay we can come back and start operations. Because...I believe that discussion would be narrow if we were to recommend something to the Commission that says if x, y, and z have been discussed and not entered into an agreement. Again, it's a loose end.

Ms. Nishimitsu: The only concern is, you know, the agreement would be a private agreement about what Shredco has to do to satisfy ADC and KAA; not necessarily addressing what the Commission might believe are true negative impacts that need to be mitigated by Shredco, not just for the benefit of KAA or ADC, but for the public in general. Those appear to be dust, which is already a proposed condition; he has to control his dust and he has the means to do that. How he controls dust on the road owned by ADC, you know...I'm just concerned that the dust control issue is going to be, now you got to control everybody else's dust that uses the road, the farm road, which would be a big burden on...and we haven't worked out the details of that agreement yet. Will the Commission then determine that the inability to reach an agreement was the fault of Shredco and therefore you can never commence operations? Because then it becomes...it's almost a point where the Commission becomes a silent partner overseeing a three-party agreement to which the County is not a party. Only in that...and I'm maybe paranoid about...

Mr. Dahilig: As are we. I think the fact of the matter is though that the people that are coming to this body for relief are the exact bodies that you're in three-party negotiations with. So that's where the overlap is in the concerns that are being brought before the Commission are, in fact, the people that you are discussing these mitigation measures with right now. If we just take them as at face value for what relief they're asking from us, we can certainly fold those in as conditions, but that may not be, what in the end through negotiation, you may arrive at as the proper mitigation that these two (2) other parties are seeking. So I think that's what kind of threw us for the loop this morning is that there are these discussions that are now going on. It's up to the Commission if you'd like to proceed based facially on what has been presented or would like to have the discussion for negotiation mature between the parties. I think that's really the two (2) delineated paths, I would say, before the Commission.

Chair Anderson: And prior to bringing this...because we can, as a Commission, make a decision today. If you're not willing to waive the timeframe, then that's what we'll have to do. But given that because of the concerns that have been raised by the Clerk, in terms of us identifying conditions that may or may not be required, ultimately if you were to negotiate...it's my opinion

that this is not right, that this particular permit is not ready to go because of this missing information and particularly missing an interested party here today. I just caution you on...for us to go ahead and make a decision today that it may not be the best outcome for all parties involved, so that is the, sort of, concern here; is if we don't have enough information that's been provided and there's ongoing negotiations, that this may not be the most efficient solution. But I'll go ahead and allow...we have a Commissioner that I believe...if you have a question. If it's a comment, we'll reserve that to discussion if we're going to move on with an actual motion.

Mr. Keawe: Okay, then we'll reserve.

Chair Anderson: Okay. Would you like to have some time to discuss this matter with your Client?

Ms. Nishimitsu: Yes, thank you.

Chair Anderson: Okay, we'll go ahead and take another ten (10) minute caption break.

The Commission recessed at 10:18 a.m.

The Commission reconvened at 10:32 a.m.

Chair Anderson: Call this hearing back to order. Okay.

Ms. Nishimitsu: Thank you. After discussion and in part based on my paranoia, we would agree to have it be put on the second July agenda which is a two (2) month period, which hopefully gives us sufficient time to work with the ADC Board and the KAA Board, and come to a written agreement. By the time we're back on the agenda, we can come back and either show you we've signed off or we're at an impasse.

Chair Anderson: Okay.

Ms. Nishimitsu: So if that agenda date is satisfactory to you.

Mr. Dahilig: So just to be clear that your Client would be amenable to waiving the action time period to July 28th incumbent on this matter being set for that agenda?

Ms. Nishimitsu: Yes, correct. Shredco is...really wants to move the traffic out of the Kekaha area. It's a benefit to everybody at that point while he's doing work that the County would like to see proceed. And because he's going to be neighbors with ADC and KAA, when in fact is a tenant right now, he understands that politics dictate that you get along nicely with everybody around you. Although he is concerned that now he can't apply for DOH permitting because he can't do it without the land use permits, he understands that for the greater good it's something that should be done; giving this deferral.

Chair Anderson: Any questions from the Commission?

Mr. Abrams: Yes. Would it also be amenable...I'm assuming a couple things here, and help me with this. Number one (1) is that the State and ADC, the issue about non-farming activity is on that area that is part of the co-op, I guess is...is that acceptable to and now you can go ahead and enter into an agreement in regards to this property?

Ms. Nishimitsu: Are you talking about the 15 acre license area?

Mr. Abrams: No. This is 12 acre.

Ms. Kaichi: Contrary to our first testimony, we feel more confident now, after seeing the Department of Health application and for the most part, leave to the Department of Health and this Commission the wisdom of those activities, but ADC does not object to those activities anymore.

Mr. Abrams: Okay, so I'm looking at that. If that got worked out then, on an agreement, then at that point, then you'd be able to not utilize Kekaha area and the Old Government Road; so that one (1) issue is there. Then the second is, is that if it didn't get worked out, you still would be...the issue for me would be, do we allow the type of activity that you are asking to be done right now, which is concrete and things that the County has already expressed they would like to see happen. Would there be such a leveled...a minimum level or maximum level in the event you can't...you have to go through Kekaha right, I mean that's the only way you would be able to go do. Have you thought about that? In regards to any sort of level or...because we could...I mean I don't have a problem approving a permit with a couple of conditions in there that require you to go get these things worked out so that you can get started with the Department of Health knowing that if these things get worked out, I don't know whether the Department of Health would be agreeable because Department of Health is a long process, isn't it?

Mr. Kaeo: Correct.

Mr. Abrams: So, I don't know whether or not that's there. We originally had a recommendation to go about doing some of these things until these objections came up, and I believe that it sounds like, perhaps that all of this will be resolved, but at the same time you would have some idea knowing whether or not you can do these things now so that you would be willing to go ahead and continue negotiating and trying to work these things out. Because I'd be hard-pressed in hoping that that would all help, all come through in the long run, without...and have to pour in a lot of resources in order to go get that. It's troubling, I guess, from that standpoint when I perceive some of this...of two (2) things; one (1) the need for the County on their landfill to deal with some of these issues and the idea that we can have this traffic not go through Kekaha, which is another big question for me on that. So I was concerned in regards to whether or not you couldn't get access to do that and now you're saying with the way the negotiations are going that that is okay. And then now I'm looking at that aspect of, you know, we'll be making a motion, I don't know if I would get it seconded or not, but to have a permit with such conditions in there so that we could go ahead and allow you to get started to do that. Rather than waiting until July, which at that point right now, if that is acceptable to you with what I'm thinking about, then I don't have a problem; otherwise, I would possibly think of going another way.

Mr. Kaeo: I just want to state that Shredco is in all best interests looking at working with everyone, including our neighbors. I just don't want...we've secured or proven to you guys that we have a legal right of way, which came with the purchase of the property, but our intent is to still work with the ADC and the KAA since they are my customers, and we are trying to make a well-rounded solution out on the Westside; as well as, relieve as much or if not all, traffic impact to Kekaha. So I will...I appreciate your statement of trying to move it forward; that is our goal, but if in all fairness, if it needs a little bit more time to meet the questions of the Commission, I'll waive that for two (2) months.

Mr. Abrams: Okay, thank you.

Chair Anderson: Question? Yes.

Ms. Mendonca: Talking about the water system. Originally in the original application there was mention about a pond that you had planned to fill; is that still going forward or is there some way that you could use that pond?

Mr. Kaeo: That pond is currently not planned to be used due to the liability reasons, so that's why we're planning to have a well drilled to give us access to the water. But through current negotiations this morning with Myra, that we are close to using ADC water with permission from the KAA to extend an existing line to our property to supply us water right now until the well is drilled and in place.

Ms. Mendonca: Okay, thank you.

Chair Anderson: Other questions? May I have a motion?

Mr. Katayama: I would move to defer this application and put it on the July 28th agenda.

Ms. Mendonca: Second.

Chair Anderson: Okay. Discussion?

Mr. Dahilig: Madam Chair, just for the record that...just to record that there was indication of no objection in waiver of time by the Applicant.

Chair Anderson: That's so noted. Okay, any other discussion? (None) All those in favor? (Unanimous voice vote) Any opposed? Seeing none, the motion carries. We'll see you on July 28th. Thank you.

Mr. Kaeo: Thank you.

On the motion made by Commissioner Katayama and seconded by Commissioner Mendonca to defer this application and place it on the July 28th agenda, the motion carried by unanimous voice vote.

GENERAL BUSINESS MATTERS (Continued)

Special Management Area Use Permit SMA(U)-2015-2, Class IV Zoning Permit Z-IV-2015-3 and Use Permit U-2015-3 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the mauka side of Weke Road in Hanalei Town, situated at its intersection with Pilikoa Street, further identified as Tax Map Key 5-5-010: 032 and containing a total area of 7,568 sq. ft. = Ed Ben-Dor and Joan Ben-Dor.

Mr. Dahilig: Thank you, Madam Chair. We are now on the last item for business today. This is Item I.3., this is Special Management Area Use Permit SMA(U)-2015-2 and Class IV Zoning Permit Z-IV-2015-3 and Use Permit U-2015-3; this is the Contested Case Hearing matters, so I'll be relieving myself from the table at this point. I believe Counsel for both parties are here for this (inaudible) action.

Chair Anderson: We're here today for the final closing arguments and a decision by the Commission in this matter. I'd like the Applicants to have the opportunity to do their final arguments; each party will have ten (10) minutes unless the parties will require any additional time. And please make your appearances.

Deputy County Attorney Ian Jung: Morning members of the Commission. Deputy County Attorney Ian Jung on behalf of the Planning Department.

Gregory Meyers: Good Morning Commissioners. Gregory Meyers on behalf of the Applicants.

Chair Anderson: Mr. Meyers, are you ready for your final arguments?

Mr. Meyers: You know, I have an easel that I want to set up. Can I do that before we start?

Chair Anderson: Yes, please. Go ahead.

Mr. Meyers: Thank you. And just so it's clear, I believe that my argument will take significantly longer than ten (10) minutes. We did have a ten (10) hour hearing, and lots of documents. I'm not intending to talk just to hear myself speak, but I think there's a lot that needs to be discussed, and I believe the rules allow for one (1) hour for each of us.

Chair Anderson: Okay, so are you requesting one (1) hour?

Mr. Meyers: I'm requesting at least one (1) hour. I don't intend to use one (1) hour, but that's what I'm requesting.

Chair Anderson: Given your request, I have no objections to limiting your final arguments to one (1) hour.

Mr. Meyers: Thank you.

Mr. Jung: Just for the record, the rule does...its 1-16-18, or 1-6-18 say "up to an hour".

Mr. Meyers: But you can get further leave of the Commission Chair, but let me just get started. And forgive me for reading my opening comments, but I wrote down some opening comments that I think are important.

I went to the Supreme Court Oral Arguments here in Kaua'i a few weeks ago. Some of us were present; Commission Chair Anderson was present, Mr. Jung was present. And in case you guys don't know, the Supreme Court came here to have a real case heard. Mauna Kea Trask represented the County, and (inaudible) attorney Vladamir Devens from O'ahu represented some Police Officers in the dispute with the County. The reason I bring it up is because what I observed...when I watched County Attorney Mauna Kea Trask on his feet, engaging in intelligent discourse back and forth with the five (5) Hawai'i Supreme Court Justices, each Justice asking pointed questions concerning a 2,800-page record. It was uplifting watching such give and take where an opportunity was offered from Mr. Trask to explain his case, and answer questions from the Justices, who were acting as the jurors in that case.

Today, you all are the jurors in this case. You all are the ones that have to decide what should happen when applicants request for the homestay permit. You have to ask questions, allow both sides to answer the questions. You are the keepers of our democratic process as it relates to a person's ability in this case to use their property in a way consistent with a large percentage of the island, and even a larger percentage in their own neighborhood. Again, you folks are the jurors. You six (6) people will decide what happens and it's important to understand how important what you are doing is, and I don't doubt that you don't understand that. You have the power, the authority, and the obligation to interpret our County Zoning Ordinance.

We're all different people with different educations and different backgrounds. Naturally, I may interpret something one way, Mr. Jung may interpret it another way, Mr. Dahilig yet another way, and you all might interpret it six (6) different ways, but that's our task today. We're here to interpret the County Zoning Ordinance as it relates to a Use Permit, which is what my clients have requested along with their Class IV Zoning Permit and Special Management Area Permit. It's important for you all to look at the information for yourselves and interpret it the best way you can. Now obviously you guys are all volunteers, you don't have the time nor the legal expertise of the Supreme Court, who we watched a few weeks ago. But regardless of what happens today, I think our County should strive to mirror the meaningful back and forth between Commissioners and Applicants with the parties permitted time to best explain the issues involved in each case and respond to questions from the Commissioners. So please, ask questions of the Attorneys; myself and Mr. Jung. If you don't understand something, ask. Feel free to cut me off and interject because I don't know what you folks are thinking about what I'm saying or what may be confusing or not confusing to you. If I'm saying something that is clear in your mind, we don't have to waste time, me telling you what you already know.

But whatever you do, let's make sure this isn't a popularity contest. Because I know it may be hard to potentially disregard and go against what Mr. Dahilig says, as he's the Clerk of your body. He sits there next to you; even in this case in the beginning. He sat there next to you, advising you folks on what to do. And I know it's hard to disregard what Mr. Jung is saying. He's usually the Attorney that's giving you advice. When I go to an attorney to hire for myself, I

like to trust what my attorney tells me. So I know it's hard, but that's why I say, we all are different people interpreting the same language, and that's what this is about. How do you folks interpret the Use Permit language? The government is not about prohibiting uses. We're here to interpret the application that you have before you, which as we know is a Use Permit Application for a homestay, so give us a chance. I know that you guys heard from other homestay operators a few weeks ago. And I know Commissioner Mahoney commented how it was compelling testimony, and how you folks learned from that. So give me a chance, keep an open mind, and evaluate the case on its merits. Thank you.

Now, going to our case. We heard, as I mentioned I think, ten (10) hours of testimony at the last hearing, and we were here, I think, three (3) or four (4) times before that. As we heard through the testimony, the Administration and the current Planning Department have no real history with deciding homestay applications. What we heard in the testimony is that Ben-Dor's are the first ones to apply, I believe, since Mr. Dahilig has been the Planning Director. What we heard from the testimony is there's only eight (8) or nine (9) homestay permits ever been granted in the County of Kaua'i. We're going to look at those homestay permits, so you guys can see where those permits were granted and what kind of uses they were and what areas of the island they were located; we're going to take a look at that and that's in our exhibits.

Let's try not to make a distinction between applications before the TVR Bill Ordinance No. 864, and applications after the TVR Bill. Because I think what the County is going to tell you, and what they've been trying to tell you through the hearing, is somehow there's some difference. But what we know through the testimony is, nothing changed for homestays after the Ordinance No. 864, nothing. Mr. Cua admitted in his testimony nothing changed in analyzing a homestay application. What the County wants to say is, my clients used to run an illegal TVR so they can't come in and now just change it and apply for a homestay. Well, number one (1) that's not true; they can apply for a homestay. And number two (2), they were previously living in their unit, which is what Mr. Ben-Dor told you when he testified a few months ago; they were living in and out of the unit, so there were times where they were living in the unit and operating it the same way they proposed to operate it. But their application is a proposal; it's a proposal to use their property as a Homestay, as a Bed and Breakfast; this has nothing to do with TVR.

We heard so much testimony about TVR this, TVR that; this isn't a TVR. Ordinance No. 864 doesn't deal with Homestays, except to say Homestays are currently regulated by the Use Permit process. Okay, we believe we argued a Homestay is a Home Business, but we're not going to get into too much of that today; we're dealing with the permit that we've requested, the Use Permit, which you folks are going to decide. I want to make it clear, there is nothing in Ordinance No. 864 that says you can't apply for a Homestay if you previously did this, or you previously did that; it doesn't exist. So don't use anything that the Ben-Dor's might have done in the past to affect your decision on the Homestay Application that's before you; we're not here to talk about the past, we're moving forward. They did what was asked of them and applied for a Homestay Permit. There's no regulatory framework for a Homestay Permit; we heard that in the testimony of Mr. Dahilig as well. He finally acknowledged, there's no regulatory framework; Mr. Cua said the same thing, Mr. Laureta said the same thing. The only thing we know about Homestays is what's defined in Section 8.1, I believe .5, in the definitions it says

what a Homestay is; that's it. The TVR Bill specifically says we're not addressing Homestays; that's going to be a separate discussion later.

And I think you guys have before you a proposed ordinance that's being revised and it's going through the process, but right now we don't have that. Well what do we have? We have the Use Permit process, we have the 1998 guidelines that we showed you guys, and that was I believe Exhibit...or the Draft Guidelines I should say. The 1998 Kaua'i Planning Commission's draft Bed and Breakfast Home Guidelines A23, and again those were just draft guidelines. But when I asked Mr. Dahilig, are there other guidelines dealing with Homestays - nope, no other guidelines. So what else do we have? We have the General Plan and that's what we're trying to present to you folks that the General Plan matters. We know the General Plan isn't the law, but the General Plan matters because the law tells us it matters; the law tells us we have to base our zoning and our island on a comprehensive General Plan. And we have a General Plan of 2000; it's supposed to have been updated already. It's there, it exists, and that's what we want you folks to look at.

So I want to make sure you guys have the proper Exhibits A-24 and A-25. I don't know if you recall, but at the hearing we had Mr. Jung correctly point out that those exhibits that we submitted at the time were incomplete. After the hearing, we got permission from the Commission Chair to submit the complete exhibits and we did so, but does everyone have the complete Exhibits A-24 and A-25? Because I would like to go through them. If not, I have extra copies.

Chair Anderson: If you could approach Counsel, she'll provide the extra copies.

Mr. Meyers: And as you guys are waiting for your copies of the complete set of A-24 and A-25, the reason...I just got these from looking at a request I made to the County for all the Homestay Permit applications, and the reason I'm presenting it to you folks is because as we talked about, there's no guidelines for Homestays in our County Zoning Ordinance. Again, we have the definition, the County says...the Planning Director says he has discretion to treat it like this use or that use, but A-24 and A-25 shows us.

I would like you folks to turn to A-25, and on the fourth page of that exhibit, there should be this chart. So there's that chart on the fourth page of A-25, and what that chart shows us is at the time of this application, which I believe was in 2004, the application contained in A-25, there were 1, 2, 3, 4, 5, 6, 7, 8; eight (8) permits approved for Bed and Breakfasts, and we know that's pretty much where we're at; nothing's changed since 2004. We know from the evidence there's only eight (8) permits that have ever been approved, so let's look at these permits that were approved. Kīlauea, Zoning: R4; Kīlauea, State Land Use Designation: Urban; General Plan: Residential, Commercial; VDA: No, not in a VDA; SMA: No; Historic: Yes.

Well, Ladies and Gentlemen, that permit in Kīlauea is the same permit that I presented you as A-24, which we'll talk about in a moment. But that permit is pretty similar to what the Ben-Dor's are asking for, right? Hanalei, Zoning: R4; State Land Use Designation for the Ben-Dor's property: Urban; General Plan: Residential; VDA: Nope, outside the VDA; one difference, right, they're in the Special Management Area and they've applied for that permit. Look at the next one, Wailua Homesteads, again, not in a Visitor Designation Area. Next one, Po'ipū, okay that

one is a little bit different right, R20, still State Land Use Designation: Urban, Resort. Alright, County's making a big deal; they're saying this is like a resort-type activity. Well, our County has permitted these Use Permits for Homestays in Resort...before; and on, and on, Keapana Valley, Wailua Homesteads, Kukui'ula, Princeville, Waimea. Right, and look at the similarities; three (3) of those eight (8) permits R4, six (6) of those eight (8) permits State Land Use Designation: Urban, four (4) Residential, six (6) non-VDA, and two (2) SMA. So it's been done before, it's been done before; these are the eight (8) that the County has ever approved in the whole history of the County and the whole history of the County Charter. Here they are; not too different from the Ben-Dor's request. And if you look below the Chart, the last sentence of that paragraph...what did the Planning Department say before? In all cases, consideration was given to testimony of surrounding neighbors; and we're going to talk about the testimony of surrounding neighbors in a little bit. I want you, if you will, turn to A-24, which is the other one that Ms. Higuchi Sayegusa just handed to you. A4 again is that first permit on the chart.

Chair Anderson: Excuse me, Mr. Meyers. I have a question; I know you wanted to encourage questions.

Mr. Meyers: Yes.

Chair Anderson: From the dates of the permits that...I just want to clarify, were these permits all granted prior to the General Plan of 2000?

Mr. Meyers: From the dates of the permit, it looks like it. I have no knowledge, other than the one in A-25, I think, was applied for and granted in 2004, and I believe that's the 9th and final permit that's ever been granted. But I believe, I can only read the chart the same way as you, I have no independent knowledge; these all look like permits that were applied for prior to the 2000 General Plan.

Chair Anderson: Okay, thank you.

Mr. Meyers: Thank you for the question, I do appreciate that. A-24, now in A-24, I'm not asking for you guys to read it, but what was happening there...this is a house in Kilauea that the Planning Department and Planning Commission said at the time "hey, you guys are proposing a motel. This is more like a motel in a residential neighborhood in Kilauea. We don't want a motel in a residential neighborhood in Kilauea". But they didn't outright just deny them, what they said is, "hey, this more fits for a smaller one (1) or two (2) bedroom Bed and Breakfast because we know it's a residential community", and this fits where the primary function of the dwelling is as a single family residence for the owner. And they said...and I'm looking at the evaluation part, this would be Page 3 of the exhibit, the paragraph titled "Nature of Operations", the last sentence. Bed and Breakfast operations in our opinion involve only one (1) or two (2) rooms rented out to tourist as a secondary function to the residence. This is the proposal by the Ben-Dor's; their daughter's going to live in the bottom floor, they're going to rent out the top. Same thing, residential neighborhood, non-VDA, State Land Use Designation Urban; it's the same thing. And what did they say in the next paragraph, this would be the second paragraph under the heading "Nature of Operations". Back then, they said each request...and I'm looking at 1, 2, 3, 4...6th line down. Each request must be judged on a case by case basis, evaluating the

merits of each project individually; along with the location of the proposal, scale of the project, surrounding uses, and input from the neighborhood. It is important to examine the zoning of the site, abutting zone and uses, the general character of the area, and structure or setup of the Bed and Breakfast itself. Right, so in the end what was recommended? It was recommended that the guest house or one (1) bedroom in the main dwelling be allowed for such use, and then they gave the conditions.

I bring this up because I follow along a little bit about what comes before this Commission and I know there's all this talk about being afraid of a flood of applications coming your way, if you approve one (1) of these requests. But we can't be denying their request because we're afraid of the flood of applications. We can deny their request if we think the law permits it; not because we're afraid of a flood of applications. That's why you guys have the ordinance that's been in the making, supposed to have been in the making since 2008. We need to look at this case case-by-case, look at the merits of their proposal. What they're proposing is to have an owner-occupant, their daughter...and if it's going to be a condition that she needs to be on title, they're willing to do that. It's not a problem. We put that in our proposed findings of fact, conclusions of law as a suggested condition. Live there on the first floor, rent out one (1) or two (2) rooms in the upstairs; something common in their neighborhood, or not uncommon to have people renting rooms in that neighborhood.

So that's A-24 and A-25, and the reason I bring this up again is because this is what we know we have; we don't have much else, we don't have much else. We get the law, Use Permit, compatible use which I'm about to talk to you about. And we get the General Plan, and that's pretty much it in terms of guidance for you folks.

Again, I want to make sure that we understand that Ordinance No. 864 specifically does not address Homestays as being part of that regulatory framework of that Bill. I've brought with me, and I've read through these two (2) white binders; two (2) of these things. This is the legislative history, these two (2) binders, of Ordinance No. 864. The only talk about Homestay is the fact that we're not addressing Homestays in Ordinance No. 864. This is three (3) years of talk all about TVR's, Transient Vacation Rentals, and we know that because the bill that came out, Ordinance No. 864...and if you want to follow along, I believe it's A-20. What does it say about Homestays? This is Page 2, the Bill does not apply to a Bed and Breakfast unit (Homestay). It is the intention of the Council to address these units as a separate matter after establishing a regulatory framework for Single Family Transient Vacation Rentals. Homestays are presently regulated through the Use Permit process, and that's why we're here today. But equally as important, and this is to refute some of what the County is going to tell you and has told us through their evidence, the top of that page...this is probably the intents and purpose of the bill...and what it says is, while regulating...and I'm on the first full paragraph halfway down...while regulating Single Family Vacation Rentals will not guarantee more affordable housing, it will dampen speculation and bring a halt to uncontrolled growth and cumulative impacts of Vacation Rentals, which have affected the traditional neighborhoods of 'Anini and Hā'ena, and which could or are beginning to also affect neighborhoods such as Waimea Valley, Kekaha, and the makai side of Kapa'a Town. So even that TVR Bill addressing Transient Vacation Rentals wasn't worried about Hanalei; wasn't one of the issues in all of this legislative history, these two (2) binders, not talking about Hanalei. The Ben-Dor's live in Hanalei.

Madam Chair, I would like to go to the easel to turn around one (1) of my poster boards. Is that acceptable?

Chair Anderson: You may approach.

Mr. Meyers: No tricks here. This is the Use Permit standards. Alright, this to me is why we're here. I'm going to read the definition. A Use Permit may be granted only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development, activity, or use in the particular case is a compatible use. Number one (1) has to be compatible...and I'm going to talk to you guys about that in a moment...has to be compatible, and is not...this is what it can't be, obviously...detrimental to health, safety, peace, morals, comfort, general welfare of persons residing or working in the neighborhood, other proposed use or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the Applicant or other lands or waters, and will not be inconsistent with the intent of this Chapter and the General Plan. Madam Chair, may I approach the easel again?

Chair Anderson: You may.

Mr. Meyers: The first question we must ask ourselves in evaluating this Use Permit is, is the use compatible? Great for us is the CZO defines compatible; we don't have to look very far. Compatible...this is straight from the CZO definitions, I believe 8.1.5...compatible use means a use that because of its manner of operation and characteristics, is or would be in harmony with uses on abutting properties in the same zoning district. In judging compatibility, the following shall be considered: intensity of occupancy as measured by dwelling units per acre, pedestrian or vehicular traffic generated, volume of goods handled, and other factors such as, but not limited to: vibration noise level, smoke, odor or dust products, or light or radiation admitted.

You guys heard a lot of testimony about the neighborhood where the Ben-Dor's have lived. I don't know how many of you frequent Hanalei. We know Mr. Cua never went to the house, we know Mr. Dahilig never went to the house, but they testified. Mr. Cua testified about what he meant, what was meant by compatible to him. This is what Mr. Cua said...or first of all, before we get to what Mr. Cua testified to and what Mr. Dahilig testified to, I want you guys to think about the neighborhood and I want you guys to look at, if you would, the map of the Applicant's neighborhood which is A1. This was also produced as part of their application, which I believe is the County's Exhibit 3. A1 shows a map that we acknowledge was produced by Mr. Ben-Dor, was done by Mr. Ben-Dor. You heard testimony from Mr. Lindsey and you heard testimony from Mr. Ben-Dor. And they told you that that neighborhood, Hanalei Palms Subdivision, is comprised greatly of other vacation rentals; all around them, vacation rentals. That's their tax classification of their neighborhood; most of the units vacation rentals.

And what the County told you, and I'm sure what Mr. Jung is going to tell you today is, oh those vacation rentals are illegal. They're non-conforming uses and because they're illegal, you can't be compatible if you're running something similar. But...do we really believe that? If I propose

to operate a gas station in a neighborhood full of gas stations and six (6) of the ten (10) gas stations don't have all their permits or don't have all their licensures, is my gas station all of a sudden not compatible with my neighborhood where there's ten (10) gas stations? Just because four (4) don't have the proper licenses, is that what we're saying? It's not compatible? Really?

But let's go back to the definition... a use that because of its manner or operation would be in harmony with uses on abutting properties. Vacation rentals is not the exact same, we know that. The General Plan tells us Bed and Breakfasts are preferred because you have the owner on the property, but it's definitely similar, right? People renting property on a short-term basis... they're similar. In judging compatibility, the following shall be considered: intensity of occupancy as measured by dwelling units per acre. Ben-Dor's don't... they don't propose to increase the intensity of occupancy any more than their neighbors. Pedestrian or vehicular traffic generated... again, same as their neighbors; one (1) family staying there, one (1) family parking there. We heard the testimony from Mr. Dahilig; they have a driveway, they can park in the driveway, there's off-street parking. That's compatible with the rest of their neighbors, that's compatible with the neighborhood of Hanalei by the pavilion. Volume of goods handled, doesn't apply, and other factors such as, but not limited to: vibration noise level, smoke, odor or dust product, or light or radiation admitted. We haven't heard any testimony complaining about any of that. The one (1) person that we heard that's a neighbor, Steve Lindsey, said "no, I never had any problems with any noise coming from the Ben-Dor's property". Is it compatible? Sure sounds like it if we look at the definition of compatible use, but let's look deeper at why the County is saying it's not compatible.

And for that, I ask you to turn to page... if you have it in front of you... Page 97 and Page 98 of the transcript from the February 25, 2015 Contested Case Hearing. On Page 97, I was asking Mr. Dahilig questions about this Exhibit. In the middle of the page, I asked him "as part of the application process, did anybody in your Department think to go look at that Exhibit and determine whether in fact it's true, that this area is surrounded by vacation rentals?" He answered, "I can't speak for the Planner that analyzed this material." I asked, "Did you talk to the Planner about his analysis of this material?" He answered, "in general". "What does that mean?" I asked. And he goes through and tells us what it means, he doesn't look at every piece of paper, but he says... in the middle of that paragraph of his testimony... "So I trust their analysis and guidance, and I have no reason to doubt that they looked at this, but also looked at many other pieces of information to come up with a recommendation upon which I concurred with."

On the next page, Page 98, I asked him... top of the page... "Do you think it's crucial in determining whether this use is compatible with the rest of the neighborhood? To actually know what the uses are in the rest of the neighborhood." Makes sense right? I mean, we just looked at the definition of compatible use; you got to know what the other uses are in the neighborhood. My gas station example, right, you got to know what the other uses are gas stations. Homestay/Bed and Breakfast are the other uses, short-term vacation rentals. Mr. Dahilig agrees "yes", but I asked him, "You didn't go do that in this case, right?" "Me, personally, not necessarily, but I can't speak for my Planner." Down further, towards the bottom of the page, I asked, "You said you didn't take a look at it, but it's important to know the other uses of the neighborhood when determining whether a Use Permit is compatible. So would... it says "he", I

believe it's supposed to say "would you", "be surprised if your Planner who handled this application did not look at the other uses?" Mr. Dahilig, "I am definitely. I would be surprised if he did not look at the other uses."

Ladies and Gentlemen, please turn, if you would for me, to Page 138, which is the testimony of Dale Cua, the Planner who drafted the report in this case; recommending denial of my Client's permit request. Bottom of the page, I asked Mr. Cua, "Now, in evaluating the Ben-Dor's application, did you do any research to see whether these, and looking at A1...same exhibit I've asked you to look at...whether these properties highlighted in purple are in fact vacation rentals?" Next page, he answered, "No", and "Why not?" I asked. "Because we were dealing with a Homestay application." "Isn't part of the Use Permit process to determine...isn't the essential part of the Use Permit process to determine whether the use is compatible with the neighborhood?" There it is...in this particular case is a compatible use; that's what we're looking for. Mr. Cua answers, "Yes", he agrees. I ask, "So how can you tell if a use is compatible with the neighborhood if you didn't check into the other uses in the neighborhood?" Mr. Cua, "The uses were residential." Ladies and Gentlemen, I showed you the chart in A25. What was it? Four (4) of the eight (8) permits, the uses were residential. "The uses were residential." I asked, "What does that mean?" Mr. Cua responds, "No, well when you say compatible, can you clarify what you mean by compatible?" I asked him, "I'm asking you to tell me because you're the Planner, right? So I don't know, I'm asking what you took into effect when you analyzed their application." We know what his boss says he's supposed to take into effect. "I would be surprised if he didn't look into the other uses," that's what he said; crucial to the analysis. Mr. Cua, "So what I'm looking at is whether there were Homestays in the area." Ladies and Gentlemen, there are only nine (9) Homestays in the whole County of Kaua'i.

So, if your body granted those other permits in those Homestays, those charts that we looked at, they couldn't have been looking at whether there were other Homestay uses in the area to see whether it's compatible because there aren't any Homestays, other than those nine (9). And back then in the chart, there was only eight (8). So that can't be what they're asking us to look at when they're talking about what's a compatible use. Is it in harmony with the rest of the neighborhood? That's the key. Is it in harmony? They're not trying to operate some horse riding adventure at their property, they're doing the same thing the neighbors are doing; it's definitely in harmony, definitely in harmony. How can it not be? It's the same thing. Not the exact same thing, we know right, it's a Bed and Breakfast, even better the General Plan says. Because you have a homeowner occupant living there to deal with complaints. You have a homeowner occupant living there to be part of the neighborhood. This isn't just people that live somewhere else and are placing renters in this neighborhood. But the point I'm trying to make is the County, the Planning Department, didn't even look; they didn't even look to see what else is going on in the neighborhood. Mr. Cua said they're looking for other Homestays; there are no other Homestays, we all know that. There's only eight (8) or nine (9) in the whole County, not in Hanalei Palms Subdivision. Finally I asked, "So you only considered in terms of whether the use is compatible, whether there were other Homestays in the neighborhood?" "That's what I was looking for," he said. Is that fair? Really? Is that what compatible use is about? Whether there's other Homestays in the area, when there's only eight (8) or nine (9) in the whole County.

Let's look at the rest of the Use Permit definition. I told you about compatible use and I'm happy to answer questions if you have it, but what can it not be? It cannot be detrimental to the health, safety, peace, morals, comfort, and the general welfare of persons residing or working in the neighborhood of the proposed use. Ladies and Gentlemen, who knows that better than the people that actually live there? And who did we hear from? We heard from Mr. Lindsey, we heard from Mr. Blackburn, and of course we heard from Mr. Ben-Dor and his daughter, Summer; the people that actually live there, the neighbors, Mr. Lindsey and Mr. Blackburn. But in addition, we have A4. A4 is a petition by the neighbors that is in support of the Ben-Dor's Homestay application; look at all the signatures. Seventeen (17) on the first page, ten (10) more on the second page; neighbors, merchants, the whole gamut, right. These are the people that know whether it's detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood; they are the persons residing or working in the neighborhood. But I know the County would tell you, you heard opposition from Barbara Robeson and Carl Imperato, yeah you did. And Carl Imperato told you where he lives, more than one (1) mile away in a totally different neighborhood on the highway. He says he's familiar with the neighborhood because he runs by there. I'm sorry, but he don't live there 24 hours a day; he runs by there, there one (1) minute, gone the next. I go running too, but I wouldn't say I'm familiar with the neighborhoods that I run in and what goes on during the day just because I run by there.

What's the next part of the Use Permit definition? Or detrimental or injurious to property and improvements of the neighborhood or to the general welfare of the community. Injurious to the general welfare of the community. We got the exact opposite. You heard the testimony from Mr. Lindsey, you read testimony from Ms. Ben-Dor, Summer Ben-Dor, and you heard from my Client. They increase the general welfare of the community because their house is located directly across from the pavilion, where there's often drunk and loud people congregating. And they're the ones that police the area because if Mr. Cua or Mr. Dahilig would've gone inside their house, would have viewed what they see from their house, you look directly at the pavilion. I've been there, I looked. We have the pictures that show you; you look directly at the pavilion, you can see what's going on there, and they police the neighborhood. That's what Mr. Lindsey told you folks and that's what my Clients testified to; nobody has disputed that. They're increasing the welfare of the community, not detrimental; not detrimental to any property improvements.

What's the next phase? Will not cause any substantial harmful environmental consequences on the land of the Applicant or on other lands or waters. Not this development, this is opening your house to other people.

And the last one, and I submit to you, this is the focus of the County because it's the catch-all. It's the only thing that they can grab onto, right, and in the law...I know most of you aren't lawyers, but I know Chair Anderson is...the catch-all is just the catch-all to fill in all the blanks; I mean to plug the holes right. The catch-all is lots of different laws. This is just the catch-all; inconsistent with the intent of this Chapter in the General Plan. What does that mean? Super morphis, super huge, super broad. We got the details, and I'll submit to you it's not inconsistent with the intent of this Chapter in the General Plan. And I'll also submit to you that the General Plan says a lot of things, and I like the idea of the General Plan. It needs to be updated, we know

that, but what did the General Plan tell us about alternative visitor accommodations? Let's look and see.

We have the General Plan, I believe, Exhibit A16. Inside there, there's a section, 4.2.6.2, and if it's not too difficult, if you look at the same time at our Applicant's first amended Proposed Findings of Fact and Conclusion of Law; our Conclusions of Law No. 2 is what I'm focused on. And before I get there, let me just say this, the County wants to have it both ways, right; they like this catch-all provision, intent of this Chapter and the General Plan. So they like to say the General Plan applies, but throughout the testimony, what we heard from Mr. Dahilig is "hey, the General Plan's not regulatory, it's not the law." So on the one hand, they want to get rid of it when they don't like what it says; but on the other hand, they want to say our proposal's inconsistent with the intent of this Chapter and the General Plan. So let's get right to it and let's look what it says; 4.2.6.2. I believe it's the page entitled "4-13" on the bottom of Exhibit A16. And actually I'm looking at the second page, I guess would be...of that section, and I'm looking at Page 4-14, towards the middle of the page. I'm also looking at Page 99 of the transcript, where Mr. Dahilig is testifying. As I look at these three (3) things together, what do I see? The development standards. Again, one of the reasons we're referring to the General Plan is because they say we're inconsistent, but the other reason we're referring to the General Plan is because we don't have that much about Homestays. We got that chart in A25 that I showed you guys, we got the 1998 Draft Guidelines that the County doesn't think should be relevant because they're just drafts, and we have the Use Permit process because Ordinance No. 864 doesn't help us. So there are no laws on the books.

Let's look at the General Plan. Development standards should require: (1)...and this is for single unit uses; should require (1) a single unit with an exterior entry and interior access to all parts of the unit. I asked Mr. Dahilig the same question; Page 99 of the transcript. I said, in the middle, "Alright, let's go through these development standards. Single unit should require a single unit with an exterior entry and an interior access to all parts of the unit. The Ben-Dor's meet this requirement, correct?" And he answered, "It is. It's not regulatory, but it's true." Again, trying to push the General Plan aside on the one hand when he doesn't like what it says, trying to include it as the reason why they denied the permit when he likes what it says, but it doesn't matter. The Ben-Dor's meet this requirement. (2) One additional parking space. I asked him, "Number two (2). One additional parking space. They meet this requirement as well, right?" Mr. Dahilig, "There's places for additional cars to park, yes." Boom, we got one (1) and two (2) down; there's only one (1) left. (3) Clearance for use of the sewer system or individual wastewater system. Well that's in the application; Department of Wastewater weighed in on that. And Mr. Dahilig wanted to battle me on what it says up to 1,000 gallons, but whatever, it says that for what they're proposing, the Department of Wastewater looked at it; they're clear. We meet all three (3) requirements in the General Plan of single unit uses. So are we inconsistent with the intent of this Chapter in the General Plan? Again, that's the catch-all. We're right on target. This is what it says, this is the General Plan, development standards for single unit Bed and Breakfast.

What's even better for the Ben-Dor's, they meet the next one, the next paragraph; Page 4-14, some owners wish to operate multiple Bed and Breakfasts and they give more development standards, which we addressed in our response to the Planning Director's Report. And which, if

we go through, they meet these ones too. But they're not asking for a multiple unit Bed and Breakfast; we're willing to limit it, single unit uses. And you can't possibly say after what we just went through, and what Mr. Dahilig admitted to on the record, that it's inconsistent with the intent of this Chapter in the General Plan. They're doing exactly what the General Plan says; 1, 2, 3. They meet all the requirements of single unit uses. And again, this is Conclusion of Law No. 2, Applicants' First Amended Conclusion of Law No. 2, and we even talk about how they meet the requirements for multiple unit Bed and Breakfasts as Conclusion of Law No. 3. So anyway you look at it, it's not inconsistent with the General Plan.

What is the Department saying is inconsistent with the General Plan? They're trying to say that it's a residential and it's a resort and all this other stuff, but that's just their interpretation because I showed you how Planning Commissions before you have approved these things in the same type of neighborhoods; that's just an interpretation. And what I told you folks in the beginning, your interpretation may be different from my interpretation may be different from their interpretation. You guys got to listen to what you think your own interpretation is, and whether that even matters because this land is State Land Use Designation's urban; that's consistent with six (6) of those other eight (8) permits that I showed you.

I'll close with this, and I would like to reserve the rest of my time for rebuttal. The Ben-Dor's have been through a lot in this process. It started back in 2013. They were cited for that illegal TVR, and that's the only reason that TVR comes in the conversation because that's what they were cited with. And they chose to cooperate, they paid their fine; you heard Mr. Laureta say that. They made their agreement. Mr. Dahilig is not doubting that. They paid the fine. They paid extra money for their SMA Permit in this case because someone in the County told them that it was a development valued at greater than \$500,000. All they're doing is inviting people into their house; that should've been a SMA minor as I read the rules. But they paid the \$1,300 because they were cooperating, and you know that Mr. Ben-Dor was charged as a criminal and he took care of that too; and he said I just want to move on. He paid a fine there too, and he paid tens of thousands of dollars to my office to sit here in these hearings and prepare for this, and try and help him get this permit. And he's lost almost one (1) years' worth of his business; taken away before the Department even, or the Commission ever makes a decision right? Generally the opposite of how due process is supposed to work. You can't deprive somebody of a privilege or a right, until they've had an opportunity or notice to be heard. Given all that, even given all that, on the merits, on the definition of Use Permit and compatible use, the Permit should be granted. Thank you.

Chair Anderson: Okay. We'll have the final arguments by the Department as well, and then if the Commission has questions, we can ask questions at this time.

Mr. Jung: Okay, again, Deputy County Attorney Ian Jung on behalf of the Planning Department.

Chair Anderson: And excuse me, we'll limit your testimony to...or final argument to no more than one (1) hour.

Mr. Jung: Understood. I won't need that much time. One of the biggest issues in this case seems to be a woe is me reaction. The Ben-Dor's claim that they have gone through a disaster of

a process, but this is a reality in land use entitlements where you have process, right. And when we look at what happened, it seems the Applicants and their representatives want to ignore the fact that they actually operated an illegal TVR. They also want you to ignore the fact that what they claim is compatible uses within the current neighborhood are TVR's, but still, they want you to ignore the fact that there are TVR's surrounding them.

The reality we face, and to me it's quite impressive that they would actually read the legislative history of Ordinances 864 and 904 because they are telling, but what they completely overlooked and what they failed to recognize is the fact that Ordinance 864 defined what a Homestay is. And although there's no regulatory framework in terms of standards and regulations that apply as conditions for Homestays, the reality is the new definition, in Ordinance 864, set the parameters of who can be a Homestay operator. And if you look at that definition, and I'll read it to you, and it says "means an owner occupied dwelling unit, in which overnight accommodations are provided to transient guests for compensation for 180 days or less within the same dwelling unit in which the owner, or lessee, resides in the guesthouse". Mr. Ben-Dor owns a multitude of properties on the north shore. He does not live in the house of which the Applicant is asking to have a Homestay operation. His daughter on the record testified she does not have an interest, nor does she have a lease. This is a case where the Applicants did not get their documentation together, did not do all their necessary homework in actually reading what the definition of a Homestay is, and getting everything, all their ducks in a row, before they submit an application.

Mr. Meyers suggests we're scared. The Department's scared of this floodgate that's going to open up, but the reality is we're not scared, but we're concerned. And why we're concerned is because you're going to have a lot of people, just like Mr. Ben-Dor, who were operating an illegal TVR, just neglected for whatever reason to honor the law and get its Non-Conforming Use Certificate, and realize after enforcement action gets taken upon him that okay what can I do to try and get the best value out of my home; to treat my home as a commodity. I'm going to use it as a Bed and Breakfast, so I need to come in for a Use Permit for a Bed and Breakfast.

Yeah, the General Plan talks about what a Bed and Breakfast should be and so does now the CZO by way of definition, but the reality we're faced with here, as the first Bed and Breakfast application or Homestay application before this body, is the fact that it comes after the TVR regulations.

Alright, history is a beautiful thing and if you look at how, and it's all in the exhibits, I'm not going to bore you all with reading through it all, but if you look at how it all started. In 1998 when the General Plan started, a thirty-four (34) member CAC, or Community Advisory Committee, tackled all the major issues on Kaua'i that were relevant to those individuals. As they waded through the process, this issue of alternative lodging came forth. And yeah, they recommended...hey County, it's a problem and although the Ordinance doesn't cite Hanalei as a specific problem area, the General Plan actually did cite Hanalei as a problem area because there was a huge influx of TVR's and a huge influx of transients. Which in effect, and we can't deny this, that it is displacing residential neighborhoods. There are more transient based occupiers where you're sharing, and as we all can recognize with millennials these days, you're sharing everything like Uber; where you're going to share a car to get somewhere.

But are there impacts to this? Yes there are because they destroy neighborhoods. So what the Council did is set a course, or chart a course, to look at how we're going to deal with this in the future. In one of the exhibits that Mr. Meyers submitted on behalf of his clients, was the Helber Hastert and Fee Study looking at Bed and Breakfasts and looking at TVR's, so there's a big debate about what the outcome of that study should be, which led to what it is and it's in the documentation. But in effect, it just said, hey create regulatory programs for TVR's and Bed and Breakfasts, now what we call Homestays.

So then what happened next, in 2006, a bill was introduced to look at, okay how do we deal with both Bed and Breakfasts and TVR's? This is similar to what the City and County of Honolulu and the County of Maui did. They looked at those two (2) uses together; Bed and Breakfasts and Homestays...or Bed and Breakfasts and TVR's. So as the Council waded through the process there was a lot of heated testimony and a lot of negotiation between relevant groups, whether it was the visitor's association or Bed and Breakfast realtor groups and whatnot, and they came up with a proposed ordinance. That proposed ordinance looked to regulate both B&B's and TVR's, and address both at the same time. For whatever reason as the bill made its way through, looking at the legislative process, the Council chose to bifurcate the issues. When the Council bifurcated those issues, they separated out B&B's from TVR's. The way the Department had historically looked at B&B's was through a Use Permit, but they had never regulated TVR's, so what they did is they grandfathered those TVR's and said well let's deal with B&B's in a later ordinance and create a regulatory framework. But crucial to that ordinance was the fact that they actually defined what a Bed and Breakfast is, and they redefined it; they call it a Homestay and we read that definition.

So Mr. Meyers goes back and says hey, hey, hey, woe is me, there's other TVR or Bed and Breakfasts that have been issued around the County, eight (8) or nine (9), but let's take a look at two (2) of those. And if you look at the Exhibit 25 that was submitted, the completed version this time, on the first page there, take a look at Condition No. 2 to this Bed and Breakfast. The Bed and Breakfast shall be restricted to a one (1) single family residential dwelling unit, which shall be the full-time residence of and managed by the Owner/Applicant. Guest rentals within the existing dwelling unit shall be limited to downstairs and the common area of the downstairs as represented by the Applicant. I can't speak to all eight (8), but in this one here, it was an owner-occupant. In the application that's before you, it is not an owner-occupant.

Alright, so let's look at the report that was done and that was the reference here with the table on what appears to be on Page...was the first page of the report...on Exhibit 25. Alright, conditions imposed for Bed and Breakfasts uses generally reflected the following. This is the analysis done by the Planner and I believe it was then Planner Barbara Pendragon who was addressing these issues. If you look at C, the dwelling unit contains a B&B is the primary residence of the owner-proprietor or lessee-proprietor. Now this report charted the course for what the definition of Homestay was. Now we look at owner-occupant and lessee. The change that's happening before the Council right now is to eliminate the word "lessee" because if you look at the report attached to that, you wanted to have site specific people that are dealing onsite constantly and can be held accountable. Mr. Meyers' application or the Ben-Dor's application say, hey we want a sole proprietor to operate it. Yeah, it's not going to be me as the owner-occupant, as Mr. Ben-Dor who is the actual applicant; it might be my daughter, but she's here in Hanalei sometimes

and Hale'iwa at other times. That casts huge suspicion upon the Department because how do we regulate a non-owner occupant who may be there, may not be there, might bring guests in when someone's not there; it just doesn't make sense in terms of what the direction was in...let's see, this one was in 2004...and what the direction is now after the Council reconciled the definition of Homestay and put it actually into the books.

So what the Department is concerned about is ensuring that these operations are owner-occupants or have a lessee. If the law changes, to eliminate "lessee", then the new standard would be only owner-occupants. So they want you to believe that hey they're compatible, but they want to say their compatibility is with TVR's, of which they were illegally. But the reality of our non-conforming use, and it's often complex to kind of wrap your head around this issue of non-conforming statuses because you're technically legal non-conforming, is that those TVR's that surround Mr. Ben-Dor are now legal, non-conforming uses, which under the current Code are no longer compatible in that neighborhood to be utilized as a comparable use. What he neglects to mention is the fact that there are no other compatible Bed and Breakfasts or Homestay operations in that immediate neighborhood. And where we're focused on, where the County is focused on...yeah it's a catch-all, but it's the gist of what a Use Permit is all about. And I'm going to stand up, if I may approach...

Chair Anderson: You may approach.

Mr. Jung: This line here is a catch-all, "will not be inconsistent with the intent of this Chapter and the General Plan". Yeah, the General Plan can go both ways; we understand how the General Plan works, it's a vision policy-setting document. But here, we have "will not be inconsistent with the intent of this Chapter". Right now...right now, this application is inconsistent with the intent of this Chapter because the definition states it has to be an owner-occupant or a lessee. And the Ben-Dor's, prior to coming in and applying for their permit, did not do their due diligence in understanding what the law is and what is required of them when they come in to apply for a Use Permit for a Homestay, and meet that definition. So from the Department's standpoint...yes, they are incompatible because they did not meet the definition of what a Homestay is under the CZO.

What does this mean? In our Proposed Findings of Fact, Conclusions of Law means hey, if they need time to get their ducks in a row, do whatever conveyances they need to do if they want their daughter to live in the home or if they want to create a lease, they could've done that, but they didn't do that. Because they want to test what this law is all about, they want to test on whether or not they're compatible, even though they don't meet the definition. So we're faced with an applicant who will set the tenor of the next flood of applications that will be before you, and it will set the pace of how you folks evaluate these applications.

And I, too, was at that Supreme Court hearing, and it's amazing how much respect these Supreme Court Justices have for the law, and the law of which the legislature passed. Just as Mr. Meyers asked you to keep an open mind, I also ask you to keep an open mind and respect the fact that the legislature makes the law, and you folks are here to uphold that law and apply that law to any fact pattern that's set before you.

So the Department requests that this matter be denied, this application be denied, because it's inconsistent with the definition of Homestay. And if they want to get their ducks in a row, there's a provision in the CZO that allows them to have a six (6) month period, wait period, before they can reapply for a permit. If they reapply for that permit, under the new standard or under the current standard, which is allowable as a Homestay definition, then you can be evaluated based on the merits of how the application is then submitted. So the Department asks that this permit be denied, and then if they want an opportunity to apply in the future, they will have that opportunity if they wait a six (6) month period of time. So if the Commission has any questions, I'm certainly open to answer any questions.

Chair Anderson: Okay. Mr. Meyers?

Mr. Meyers: Are we doing questions or rebuttal first?

Chair Anderson: There was...I did note that you had a few minutes left over from your hour to do a rebuttal, so I would allow ten (10) minutes for you to do rebuttal.

Mr. Meyers: Thank you. I'll start my stopwatch. I'm not sure what Mr. Jung is saying when he's saying that they...I think what he's trying to say is they have to be operating in the way that they propose in order to prove to you that the owner-occupant lives there. But of course if they're operating and they're living there and renting, then they're in violation and they're going to get this cease and desist letter that you guys have heard about. So if he's trying to say instead that they need to be living there and not operating to prove to you that they've met all their requirements, I don't read that anywhere in Chapter 8 of the CZO. They're making a proposal; they're not operating right now, nobody's living in that place because they were told to cease and desist. They're making a proposal to operate in such a way that their daughter would be living there. We can call her a lessee; they're in the process of making that happen. We can call her an owner; they're in the process of making that happen. Whatever we need to do to satisfy the Planning Commission, and the Planning Department says their concern is they're going to come in and not be there and how can they monitor. No, you have to make it a condition right? I mean that's what we saw on A-24 and A-25, just what Mr. Jung pointed out. You make conditions as part of the permit.

And what's the condition he told you guys? The one he just read. The Bed and Breakfast use shall be restricted to one (1) single family residential dwelling unit which will be the full-time residence of and managed by the Owner/Applicant. Again, that's before the Homestay definition, which we don't have a problem with the Homestay definition saying owner-occupant or lessee. But even if it says owner-occupant or if it says lessee, it wasn't around when this...or maybe it was around when...no it wasn't around, sorry, when this happened because this was 2004. The point is this, we're okay with that condition; make it a condition that she has to own it. But you can't say you're denying the Use Permit because they don't show ownership now. They're not going to go transfer ownership if this doesn't work, right. I think what Mr. Ben-Dor testified is they're going to sell the house, if they can't get this permit, so why would they go and transfer ownership and mess with all this tax stuff. But they're in the process of making that happen to satisfy the Commission and that's what we put as part of our proposed decision and order. A: Applicant...this is a condition: Applicant must submit written documentation to the

Planning Department within 90 days showing ownership of the subject property is consistent with the person or people occupying the subject property or in the alternative written documentation that shows the person or people occupying the subject property are lessees of the subject property. They're fine with that; make that a condition, but I don't think we should be denying the permit because nobody's living in the house right now. This is their application proposal. Once they're awarded the permit they'll put it into action and finalize those details with whatever conditions the Planning Commission puts on them.

So we're not trying to run away from the Homestay definition. We know there's a definition; that's fine, owner-occupant or lessee. It doesn't define what a lessee is, or what an owner-occupant is right. Ms. Ben-Dor testified and Commissioner Abrams asked her questions. He said he wants more specifics in the future, but what he said at the hearing was he was fine with the explanation given to him on February 25th; she's going to be living there, there's an agreement with her parents, we'll meet whatever the Planning Commission needs us to meet. You know, they have an attorney working on that right now, waiting for instructions from the Planning Commission to finalize whatever the Planning Commission says they need.

It sounds like we agree with the Department, right, we agree. There's the definition, you have it there, owner-occupant or lessee. It's not the Ben-Dors, Joan and Eddie Ben-Dor, but it's going to be their daughter who's going to have ownership as soon as they get the go-ahead from the Commission to go-ahead and do that.

And at the end, Mr. Jung was talking about that the Ben-Dor's want this to be a test case; that's the last thing they want. They don't want a test case, they just happened to be the first ones that applied because they got cited and dealt with it the way we said, and they were advised by the Department the way they were advised; so they applied. They don't want to be a test case; nor do I think we should look at it...as I said in my opening comments...you shouldn't look at this as a test case. Every application that comes before you, it says, it's supposed to be a case-by-case approach; that's what Commissions before you have done, that's what they talk about in A-24 and A-25, case-by-case approach. Look at all the factors of the Ben-Dor's and their neighborhood and their requested use and their compatibility; doesn't matter what other applications are going to come before you. If other people are going to try and do whatever they're going to do, well case-by-case basis. I believe you guys have another case on the agenda today where the Department is recommending approval, right. So whatever you do today doesn't have to affect what you do in all the other cases. It's your interpretation of what the law says based on our presentation and based on the evidence. I know some of you weren't here on February 25th, but hopefully you've reviewed the transcript and you're familiar with all of the evidence, so that you can make a meaningful vote. Thank you.

Chair Anderson: Alright, we'll go around for the questions from the Commission. We'll begin with Commissioner Abrams.

Mr. Abrams: Mr. Meyers, relative to the owner/lessee, looking at that definition. Why was it that you didn't do one or the other? When the application came in before we had the Contested Case that caused them to go ahead and deny that.

Mr. Meyers: I'm sorry, I'm not sure I understand. Why wasn't...why weren't they an owner or lessee before?

Mr. Abrams: Yes.

Mr. Meyers: Well, Ms. Ben-Dor was...

Mr. Abrams: As the Applicant because it was just Mr. Ben-Dor, right. I mean, I understand the intent and look at that, but now with the point relative to the definition okay, because your application was denied in, I forget, what November? October? I can't remember when.

Mr. Meyers: I believe it was October.

Mr. Abrams: Yeah, October, and then you appealed it. But up until that point, I'm not quite sure why...if the definition of Homestay in 864 said that you needed to be an owner-occupant or a lessee, that one (1) of those two (2) should have been the Applicant at that point. Either a lease should've been...if it was going to be a lessee, or if it was going to be an owner-occupant, where Mr. Ben-Dor would move into the house and actually operate it as a B&B, as opposed to a non-owner-occupant, or non-owner of the property shall I say.

Mr. Meyers: So I believe Ms. Ben-Dor...first of all, no one's living there now; I mean they sleep there sometimes, but nobody's residing in the place. But Ms. Ben-Dor...what Summer Ben-Dor told you specifically to your questions is she has an agreement in place with her parents.

Mr. Abrams: Yes.

Mr. Meyers: In Hawai'i, you can have an oral lease; you can have an oral month-to-month lease. There's nothing that says a lease has to be written. If you're asking why didn't they amend their application...?

Mr. Abrams: Yes.

Mr. Meyers: Because they didn't want to amend the application until they knew what the Planning Commission wanted, and we thought that it was reasonable that the Planning Commission would make whatever condition they were going to make on them. With regards to putting Summer Ben-Dor or any of the other children on as owners, there are tax complications which they are dealing with an attorney on and they've hired an attorney, Karen Baldwin, who is setting up some form of a Trust to make that happen, and it's just taking time. They were a little bit reluctant at first because they didn't want to go do all that and have tax implications and then have to reverse it off if their permit is denied, and they instituted their plan to sell the house. But as you mention, the definition says owner-occupant or lessee, and their position is that Summer Ben-Dor, their daughter, currently is the lessee. If the Department...

Mr. Jung: Objection. It misstates the record. Chair. He's testifying as...Mr. Meyers is completely testifying against what the actual record says where if you look at the February 25th

transcript, Page 25, Summer Ben-Dor stated she does not have a lease on the property. So I would respect that the attorneys would stick to the record when...and rather trying to testify on behalf of their client when they testified otherwise.

Mr. Meyers: Hang on, let's look at the record, Page 26. I asked her, "Yes, Summer, you commented to Mr. Jung that you don't have a lease with your parents to live at that subject property, but you have an agreement with your parents, right? That you'll be living at the subject property." "Yes." "Does your agreement entail you'll be taking care of the Bed and Breakfast, if in fact it's permitted?" "Yes." And it goes on and on, so we can splice to technicalities. Summer Ben-Dor is not an attorney, right; maybe she doesn't understand lease agreement, maybe you folks don't, but in the State of Hawai'i you can have an oral agreement. You don't have to have a written lease, you can be a lessee by having an oral agreement, month-to-month tenancy. So I don't think...

Mr. Abrams: Don't you need on a Zoning Application a lessee has to be a lessee of a specific duration? At least a specific duration other than an oral lease.

Mr. Jung: It doesn't say a specific duration, but the reality is here they didn't submit that in their application. They're trying to change the course in the mid-stream of their application to say there's a lease. They want a proprietor operating there, not a lessee.

Mr. Abrams: Thank you.

Chair Anderson: Any further questions?

Mr. Abrams: No, not by me.

Chair Anderson: Okay. Do you have questions?

Ms. Mendonca: I just have a comment for Mr. Meyers. In listening, and I can sympathize with the struggle like anybody else in trying to get things straightened out, but my opinion in this to you, sir, is knowing back in October that was one of the biggest issues that was brought up about being owner-occupant. I recall there was a mention at that time that they were going to change, or make some special changes, and it's been over six (6) months up to now. It would've saved, in my opinion, your Client a lot of grief because as Attorney Jung stated, they could come back and reapply for this in six (6) months. And if the sincerity of them really being owner-occupant, it should not have been that much of a problem. That's my opinion.

Mr. Meyers: Did you want me to comment on that?

Ms. Mendonca: Yes.

Mr. Meyers: Okay. As I said, they contacted an attorney; I have a letter from their attorney, except that the evidence in this matter is closed. But the bottom line is they are creating...that process takes time, the deed needs to go through Bureau of Conveyance, so it's in the process; it's happening. They've started the process, they're in the middle of the process, and they're

waiting for Bureau of Conveyance to come back with the deed to prove to you folks that Summer Ben-Dor is the owner.

Ms. Mendonca: But in the meantime, at the moment, like Attorney Jung stated in testimony. There is no agreement, there is no lease, and even if Hawai'i has a shake hand agreement or word-of-mouth agreement, it still holds...we need to see the validity, as well as, the intent, the true intent of what the law says. And it's difficult for us to say yeah they agreed, but it hadn't happened all this time; they never lived there. So you're coming back here, asking for us to look at it with intent that there's an agreement between father and daughter, or mother and daughter, as a...to lease the property or have a...what is it...an agreement. Well, it's hard for us to believe unless we see something in writing.

Mr. Meyers: But isn't that what conditions are for? Isn't that why we have conditions that you guys make as part of the permitting process?

Ms. Mendonca: Yes, but you failed to follow the original condition. And you're back here because...the argument is the definition of what a Homestay is.

Chair Anderson: I'll have to interrupt at this time. If the Commission can please just ask questions to the parties. If we are going to go into discussion that can go into the deliberations; we can discuss the pros and cons of the evidence. And it's before us to give the weight to the evidence that's been provided, so those discussions will have to take place at a different point in this process.

Ms. Mendonca: Alright, thank you.

Chair Anderson: Okay. If there's...okay, so there's been a request to take a short break. We'll resume with questioning, but we will take a ten (10) minute recess at this time.

The Commission recessed at 11:59 a.m.

The Commission reconvened at 12:19 p.m.

Chair Anderson: Call this hearing back to order. So we will...we're in the middle of questions from Commission. We have about twenty (20) minutes of tape left, so we'll continue for twenty (20) minutes of questioning. If there are no further questions after the twenty (20) minutes, then we'll close and we'll begin deliberations after lunch, okay? So I believe we're over here with Mr. Katayama. Do you have any questions?

Mr. Katayama: Alright, thank you. Mr. Meyers, in the...in my mind, one of the distinctions between a Homestay and a TVR is that a Homestay is more residential in character versus a TVR that is resort-like, and that is taken directly from your Exhibit A-25. In your application and proposed use of the facility, how would you describe the integration of the proposed Homestay use as being more residential than resort? And in terms of integrated with the owner-occupant, or the occupant.

Mr. Meyers: So, I think in the Exhibit I want to say was A...I can't remember if it was A-24 or A-25, but they talked about how that proposal in Kīlauea...

Mr. Katayama: I mean, looking at your original proposal in...application in the proposed use where the units were...it would be used for guests of the facility, the number of guests versus the area that is occupied by the resident.

Mr. Meyers: I think in going through this process and I remember there was a question from Chair Anderson, before we had the Contested Case Hearing about what we're proposing...how much people were we going to rent to and that kind of thing. And I think what we've done as part of this process...although we didn't file a written amendment to our application, but what we've tried to explain to the Commission is that really what we're seeking is this more like a single unit Bed and Breakfast, where Summer Ben-Dor who will be an owner-occupant or lessee, whatever it is that the Commission says if they grant the permit she needs to be. She will live in the bottom, the first floor of the house, and then upstairs, there can be rented as one (1) whole upstairs to one (1) family, more like a single unit Bed and Breakfast. So you would get that residential character where she's living there full-time as her primary place of residence, and then upstairs is where you would be renting to a family.

And although none of you, I don't think, have been to the property, it has all different...it has...you can enter through the same doors to get downstairs and upstairs, you can enter through different doors. It can be arranged either way, so you have the ingress/egress that the General Plan references that we discussed earlier in 4.2.6.2., I think, so I agree that it's more residential in nature and that's...even the General Plan makes the distinction where you have somebody living there as their primary residence and renting out a room, or in this case, renting out the upstairs to a family. So she would be there; that would be her primary residence where she lives and her work would be running the Bed and Breakfast.

Mr. Katayama: But in the initial application, I think the visitor numbers as proposed outweighed the number of residents because I think the proposal was two (2) per bedroom, or two (2) per living unit, and the residential portion is detached or not integrated as part of the total residence.

Mr. Meyers: The way the structure is, is...yeah, it's all integrated. So the residential portion in their proposal would be the first floor, the bottom floor, the rented portion would be the second floor, but it's all integrated and I understand what you're saying. I think the proposal initially when they applied...the actual application was a little bit vague in terms of who's going to occupy and what they're seeking, but I think through our representations to the Commission, and my representation now, all those things can be addressed by conditions that the Commission can place in the permit to allay any concerns that the County has with regards to nobody living there, or that the Commission may have. And what they're saying is Summer is going to live there, and they're going to rent out the upstairs. If that's going to be limited to two (2) people, or one (1) family, we said we're fine with that, if that's what the Commission thinks is necessary.

Mr. Katayama: In terms of food service in the areas that will be occupied by visitors, would there be any food service available?

Mr. Meyers: Yes, there can be food service available. I don't know if you recall, but that was questions that were posed to Summer Ben-Dor when she testified. Because this is just a proposal, they haven't put it into place yet, obviously. So as you notice on the other permits of this nature that were granted, there were food establishment conditions and we deferred to the Commission to what the Commission thinks is appropriate. They can offer whatever food is necessary; the Homestay definition doesn't really talk too much about it. My understanding is that something that will be dealt with in the future, but if the Commission thinks it should be offered to better style as a Bed and Breakfast/Homestay operation, they don't have a problem with that.

Mr. Katayama: Well, again, generally what I'm trying to understand is that is this by nature residential that will be offering a portion of that as a Homestay or has this been more resort-like? Where the units are more typically independent where you have separated kitchen facilities, for example, where people could live more in a resort-like environment, as opposed to a residential environment where you're limited to certain kinds of support facilities; i.e. kitchens, laundries, etc.

Mr. Meyers: The beauty of the way this house is laid out, they can fashion it however they need to that satisfies the County. The proposal is to...for, again, for Summer Ben-Dor to live there. They haven't determined what they'll be offering in terms of food yet, but they can comply with whatever conditions. If the Commission believes that offering food should be a requirement, but that it should be limited to only having continental breakfast type of food; it's not a problem. There's ability to do that in the way the house is laid out.

Mr. Katayama: What is the...why is someone not establishing residence in the unit currently? What's (inaudible) that?

Mr. Meyers: As I tried to explain, perhaps I didn't do a good job, there's nobody living there because they were told cease and desist operations that they were doing back when they got the letter from the County in 2013; so they complied, they cooperated, they ceased and desisted. And as you might remember from Mr. Ben-Dor's testimony, Mr. and Mrs. Ben-Dor have another property in Hā'ena where they live; they built that house in 2009, I believe it was. Prior to that, they bought the house in question in 1986, and they have been running it as a short-term vacation rental for all these years, right. And then they built their house in Hā'ena, so they were living sometime in Hanalei, sometime in Hā'ena, back and forth. When this whole thing came, cease and desist, they decided okay we're just closing that house down; no one's going to stay there. Although sometimes they sleep there or when people are visiting them, they allow them to sleep there, but they're not operating it in any capacity. And the reason is, to answer the question, is because they're waiting to see what the Commission is going to do. They don't want to...we know that from Summer Ben-Dor's testimony, she lives part-time in Hale'iwa, part-time in Hanalei. She considers Hanalei to be her primary residence, but she doesn't want to shut down what she's doing in Hale'iwa until she knows that she's coming here to work full-time as the operator of that Bed and Breakfast.

Mr. Katayama: In my mind, I think that's the Catch-22 because in the application, it was presented that there is a resident and yet there seems to be a prohibition of establishing that,

subject to action of this Commission, but for the Commission to act we need to have certain facts that are in place which apparently is not. And I guess Commissioner Abrams touched upon one and now I'm sort of exploring the establishment of a residence in place that will be the occupant. So the occupancy is the other issue in my mind, but thank you. May I ask Mr. Jung a question please?

Chair Anderson: Yes, continue.

Mr. Katayama: Thank you. Mr. Jung, I know that you put a proposed ordinance that's in progress. Would you like, for me, to explain the Department's position in differentiating between a Homestay and a TVR in character?

Mr. Jung: Sure. The way the Department views a TVR as a standalone, single family home that is rented out in total; right, where there's no owner-occupant. Versus a Homestay is an operation where you're actually having, and in most cases and what was recognized in the prior permits, is that you have the person who owns the home inviting guests in to share that home with that owner. The current definition that's on the books now is owner-occupant or lessee. The proposal is to strikeout lessee because the Department envisions a better compatibility within neighborhood districts that if a person is an owner-occupant, they can quell the noise; they can quell and make sure there's peace amongst the neighborhood, and ensure that the welfare of the neighborhood is maintained. Because where the Department's coming from on this is they don't want to be a gatekeeper to applications. I mean, the reality is people are going to come in and try and convert TVR's to be a Bed and Breakfast because they missed the boat or want to try and get on a bandwagon.

So in this particular case, the Department is very hesitant to try and be curing applications mid-stream when they don't follow the rules. And in this case, they didn't have an owner-occupant, or a lessee, documented with enough evidence to prove that that was there. So the Department's position is hey if you're going to apply for a Use Permit, make sure there's an owner-occupant or a written lease that shows the established occupant who's going to be in the home as the lessee to be able to provide that service and keep noise and whatnot under control, so the welfare of the community can stay in place, to meet the compatibility test that's here on the board. Because the compatibility test, although broad, is intended to make sure that the neighborhood, and the character of the neighborhood, is intact. And with a TVR, although those were recognized as non-conforming uses, those are no longer compatible because they are prohibited uses. So that's sort of the distinction the Planning Department is making between how they view Bed and Breakfast applications versus prior TVR applications.

Mr. Katayama: Thank you. I think we have a chicken or the egg situation. Mr. Meyers, would you like to speak about the "egg"? In terms of establishing certain criteria that will meet the Homestay intent prior to any application for a permit.

Mr. Meyers: Yeah, I think that sounds like...that's what the Commission is wrestling with, and for the life of me, I can't understand why it wouldn't be the subject of conditions to the permit. There's no rule in the CZO that says you got to be operating the way you're proposing, right; they're making a proposal. So the example I can give is...the chicken and the egg...if I built a

house, and I didn't live here...or let's say I lived here, I built a house in another part of the island. Before I chose what I wanted to do with my house, I'm not going to move in because if I'm proposing to use my house as a Bed and Breakfast, so I can make income or whatever else it is I want to do...meet and greet visitors...I'm not going to get rid of my other house where I lived, and move in and establish that occupancy until I know that I can operate the way I want to operate because of the cost and the expense of doing so. So I would apply and make a proposal. Once I'm granted my Use Permit, I would expect there would be a condition that I have to live there and be an owner-occupant, consistent with the definition of Homestay, and then I would make those arrangements to be the owner-occupant. And that's all they're asking for in this case. We've heard that Summer Ben-Dor, again, lives part of the time in O'ahu. She's not going to fold up shop over there and move here and be the occupant/lessee/owner, whatever it is we want to call it, until we know that this is going to be approved. So I think that's the catch that you've identified.

Mr. Katayama: Thank you.

Chair Anderson: Okay, any further questions?

Mr. Katayama: No, thank you.

Chair Anderson: Okay. Do I have any questions from Commissioner Mahoney?

Mr. Mahoney: What seems troubling...you know, and I think it's the same thing that we brought up so far, and even in the evaluation used in A-25 about the existing Bed and Breakfast, the conditions that were imposed on the B&B's uses generally reflected the following. And Condition C, dwelling unit containing the B&B is the primary residence of the owner-proprietor or lessee-proprietor. Those examples you used that...why shouldn't it be the same now as it was then? The owner-proprietor is the primary residents, you know. I don't understand. Mr. Meyers, if you could clarify that for me.

Mr. Meyers: No, we agree. That's one (1) of the conditions in the permit; we agree. So we can make that a condition of the permit and then they'll so act and make that happen, where that's going to be the primary residence of their daughter. Look, she...Summer Ben-Dor could not apply for this permit because she doesn't currently own the property. If what we're saying is they have to lease...I mean, sorry...they have to deed the property to her before and then she can come apply, well that's where we get into the tax complications as I was discussing with Commissioner Abrams, right. So it's again...chicken or the egg, which comes first. We don't know in this case. We're all assuming that these people were living there when they applied for the permit, but we're not too sure because we don't have the whole application. And you folks should know, back then the application was just a hand-written piece of paper saying this is what we're going to do, and then you come before the Commission and they make the conditions and they discuss what it is that you guys discuss. It wasn't this long, drawn out thing describing all the property and everything. I looked at all these applications back then. You know, some of them were hand-written, two (2) page things saying this is what we want to do. So, I understand your concern, Commissioner Mahoney. I think it can be satisfied and addressed as part of a condition to the permit, which is what happened in the permit that you're citing to.

Mr. Mahoney: Could I ask Attorney Jung a question? If you could clarify your version of what I just asked please. Excuse me. Question for Attorney Jung, if he could respond to the same concern or question that I had for Attorney Meyers, please.

Mr. Jung: Sure. And I think of the residential part of it as a red-herring because they can live in the home now if they want; they just can't rent it out for a fee, right. So if they want to stay there, they can stay there. From a Constitutional standpoint, we're not taking anything; we're just denying the ability to use a property for a commercial use, such as collecting a fee from transients who come in there. So I think the residential issue is sort of off the table from the Planning Department's standpoint.

But with regard to your question, the way the Department looks at it is that prior to 2008, when there was a defined Homestay...or when there was no defined Homestay, they looked at...and it's real clear from what you're looking at in there in terms of the report from the Planner, then Planner Barbara Pendragon, it's like hey these are the standards you want to set. So the Council then codified those standards into the law, and said hey if you're going to apply for a Homestay, then you got to meet this criteria. The Use Permit standards in terms of what conditions are, then go to okay well, how are you going to control noise? How are you going to control parking? But back then, before that ordinance was adopted, there was no stated requirement that you needed to be an owner-occupant or a lessee. So that I think is the distinction from what the 2004 permit said to what is now on the books.

The concern the Department has is that an illegal TVR operator, such as the Ben-Dor's, will then try and say okay I've been shut down because I've been enforced on. What can I do now? Okay, I'm going to hire someone, or find a lessee to manage and operate my property. So now they're coming before the Commission and saying I don't have all my ducks in a row, it's a proposed use, we don't know all the details, but this is what we want, so please give it to us. No, the Kaua'i Springs case is very clear. The burden is on the Applicant to establish what is being requested, and exactly why and how. Alright, here they didn't provide any evidence other than the fact that they want to have transients stay in the home. Here, we can have...we can deny a permit for lack of sufficient evidence, and our code anticipates this where if they come back and apply later, once they get their ducks in a row and complete the task they want to do with their attorney, they can do that. So the Department is very concerned about the compatibility of what used to be compatible uses prior to the regulation of TVR's to what a Bed and Breakfast, which is not...there's no other compatible uses around there and is not compatible to TVR because they're completely separate uses, to bring that use back into the neighborhood. So until they get all their ducks in a row, all their facts straight, the Department is very suspicious about whether or not this person is going to be a supervised attendant to the transients or is she going to go back off to Haleiwa and hang out for a few weeks while somebody else is staying there. Those are the things we need to see in writing, we need to see details on, we need to be able to hone in, so we can make a valid evaluation and decision on. And that's why the Department is recommending denial on this.

Mr. Meyers: Can I follow up?

Chair Anderson: You can follow up. We have to limit it. Our time...tape change we're going to have to do in just a few minutes, so if you can follow up in two (2) minutes and then we'll have to wrap up and continue questions after our break.

Mr. Meyers: You know, I just want to say I think that's a rather onerous reason to deny the permit, right. We're talking...there's no framework. This is the first one since this Homestay definition, okay. And they put in front of you folks what it is they're intending to do. They've been operating here for twenty-eight (28) years to characterize them as, you know, trying to do this thing where they're going to hire somebody; that's not what they're proposing. And again, I know I've said it, but just make the condition that whoever lives there has to be an owner-occupant on title to the property, and that's going to allay all their concerns. To say we're going to deny it and they can come back in six (6) months...they applied in July of 2014 for this permit; six (6) months doesn't mean six (6) months. They apply in six (6) months and they got to wait another year; it's not going to happen. This is two (2) owners; this is not something where this thing has been in place for twenty (20) years. They're the first ones to apply since this definition. So, you know, don't throw them out the door just because you know, the daughter is not on title as the owner-occupant when this is the first time it's ever appeared that that needs to happen.

Chair Anderson: Okay.

Mr. Jung: May I rebut since it was my question?

Chair Anderson: You have one (1) minute. We really need to stop for a tape change.

Mr. Jung: Sure. The reference here is they did not follow the rules when they first applied. And they say we want to do this, we want to do that, but they didn't have their ducks in a row. So for the Planning Department to serve as a gatekeeper on applications, yeah we can't say no your application's not complete because that's your decision, right. But the fact is they didn't get everything completed, what the code requires, and now they're here begging for the permit to establish a condition that they didn't preconceive and pre-identify what is required. So yes, you can deny the application and they can come back later, so I think that's the clear answer.

Chair Anderson: Okay, we're going to take a break and given the timeframe, we're going to also take our lunch break as well. So let's take one (1) hour break. Meet back here in one (1) hour.

The Commission recessed for lunch at 12:41 p.m.

The Commission reconvened at 1:46 p.m.

Chair Anderson: Call this hearing back to order. We left off before the lunch break for questions from the Commission and I believe we're on Commissioner Keawe. If you have any questions?

Mr. Keawe: Thank you. I think my question is similar to what some of the others were with regard to the time and the intent of demonstrating the willingness to do some of the things that would've made the application, I think, easier to consider with regard to occupying the house.

My question is, basically, when...if in fact this permit goes through, what's the schedule for Summer coming over? Is she going to be in that house permanently or flying back and forth? Are there other business interests that would take her away? Because obviously, one of the things we're concerned with is having someone there to greet and service guests on a full-time basis. Understand, I come from the resort industry, so I understand the business very well. And you know, you go on vacation just like everybody else, but you have temporary people coming in. So is it a permanent thing that you're proposing with regard to having someone live in the house? And is that going to be an equity interest in that property that will be recorded? Or is it going to be a lease? Or some other kind of contractual arrangement?

Chair Anderson: I'd just like to clarify for the Commissioner, we did have an evidentiary hearing in which the parties were able to provide the evidence to backup, and so questions would have to refer back to the record. So if you have a question like perhaps if they can point out on the record where that answers those questions, but at this time we're not taking any new evidence, so if they have new information that's not for this time.

Mr. Keawe: Okay, that's fine.

Chair Anderson: Okay. Alright, is there any other questions that the Commission has? Okay.

Mr. Meyers: Can I answer according to the record?

Chair Anderson: Yes, you may.

Mr. Meyers: Page 25 of the transcript from the February 25th proceeding. Well, actually Page 26, and I think we...was part of what I argued about during my arguments when Mr. Jung corrected me and then I re-corrected him I guess. But in Page 26, it was asked of Ms. Ben-Dor, what are the plans and she says there's an agreement that she'll be living at the subject property. She'll be living in the downstairs as part of taking care of the Bed and Breakfast; and that's the plan, that's what was testified to by Ms. Ben-Dor. In addition, Mr. Ben-Dor testified at that hearing as well. And on Page 154 of that transcript, Mr. Ben-Dor testified that Summer will be moving in, and probably with her boyfriend who's a lifeguard on the north shore of O'ahu, and they'll be living downstairs and her sisters will also be part of it, if Summer can't be there. I believe that's what the testimony was.

Chair Anderson: Okay. Is there any other questions from the Commission?

Mr. Abrams: Yeah.

Chair Anderson: Okay.

Mr. Abrams: Mr. Meyers, can you go to Exhibit 4...and within that's the SMA Permit, Exhibit F.

Mr. Meyers: Okay.

Mr. Abrams: That's a graph, a pie graph, of the tax classifications within one-quarter mile of this particular property.

Mr. Meyers: Okay.

Mr. Abrams: I'm looking down at this list here where it says that, of that I guess, there were 83 properties that were vacation rentals, and then 88 residential, which I believe has to do with non-owner-occupants; whether they're long term rentals or second homes, this is my understanding. Then commercial, agricultural, conservation, then comes homestead, and then residential-homestead, so I guess there's a difference. But out of the 224, approximately 171 of them are either vacation rental or residential. So, I'm getting to then the point of the question I have in my mind in terms of cumulative impacts on a neighborhood, which I know you basically kept it to the subdivision in which Mr. Ben-Dor had his home. I believe...and I'll ask Ian, I guess at this point right now, relative to the cumulative impacts that is mentioned so much, right, from the General Plan all the way down the line, that number which represents a substantial one. Is that the cumulative impact that you're talking about in a neighborhood? That you are concerned about relative to whether or not they are a TVR or a Homestay.

Mr. Jung: That is the cumulative impact looking at it very broadly though because the issue the Department has is okay, let's say there's any three (3) vacation rentals. Alright, for example if one (1) of them loses its non-conforming use certificate, they'll see this avenue as a potential avenue to come in and say okay I've lost my NUC because I didn't follow the protocol that's required to re-up. I'll go and get my daughter or somebody else to come in and stay in the home and just convert it to a B&B. Those uses are no longer conforming to TVRs, which Mr. Ben-Dor is illegally operating one. Alright, so those are no longer compatible with that neighborhood under the Code. So if they convert it to a Homestay, then it goes against the traditional notions of what a Homestay was, as an owner-occupant or a lessee, right, where someone is actually living in the home, who owns the home, and doing the Bed and Breakfast as a principal resident of that home. Because we're concerned that you know, Ms. Ben-Dor, she's young, she may go in and out of flux. She might say now I want to move to Turkey or somewhere, you know, across the globe, so it's not someone's primary home of which they can say okay I'm in this home, I'll run it as a B&B, I'll welcome guests into my home. It's more like a hotel where she is not an owner-occupant, or a lessee, who's basically running it as a hotel, as a concierge for the hotel-styled operation; that's what concerns the Department.

Mr. Abrams: Okay. Greg?

Mr. Meyers: I'm still not sure where we're getting this idea that it's a hotel from, or it's a resort. The proposal is that she's going to live there; that's the proposal. We're willing to accept that as a condition that she needs to be an owner. If it wants to be a condition that she needs to be a lessee, or that she needs to get the homestead exemption; if that's going to satisfy the County, that's fine. If what Mr. Jung is talking about the cumulative impacts of somebody else seeing that the County Planning Commission has approved this and now they want to do the same thing, well to me that's for the Planning Commission to address when that somebody else comes and things have changed because if that's what they're trying to do, that's what they're trying to do. That's not what my clients are trying to do; they've made it clear from the beginning, okay. In

the record, they've lived in that place before when they were renting it, so they've offered it both ways over the twenty-eight (28) years that they bought that house since 1986. And with regards to the cumulative impacts, I think the place where we see cumulative impacts is in the General Plan when we're discussing multiple unit Bed and Breakfasts. Remember, cumulative impacts is not necessarily a factor that the General Plan contemplates considering when we're talking about single unit Bed and Breakfasts. But even still, that cumulative impacts of allowing them to do what they were doing for twenty-eight (28) years, whether they were doing it illegally or not, in talking about cumulative impacts on the neighborhood, I don't see how that's changing anything. They're just doing what they already were doing.

Mr. Abrams: Okay. Mr. Meyers, the Exhibit...was that 26, I guess it was...yeah; no, no, no, 25. This particular one was 2004 and the Ordinance that the Council, at that point, then further shaped, I guess, the transient usage whether it be Homestays or TVR's, was in their 2008 Ordinance. So these conditions were built on, I guess, the original draft plans that were in '98 before the General Plan. And previous Use Permits, I guess, prior to that in the '80s there, so I'm...it seems to me that the direction that the Planning Department is heading in is to further clarify what the intent was of...in 2008, of what to do. Why would we make an exception for this rule as to the process that they are going on right now?

Mr. Meyers: Well, we're not asking to make an exception. We're asking you to look at the rules that are in place. We don't know what the ordinance, the new ordinance, is going to say. We know that the General Plan said do it, do it now, but nothing happened. In 2008, they said we're not dealing with Homestays, we know that. So they haven't been dealt with other than to define them as this owner-occupant or lessee definition that we talked about. We're not asking for anybody to make an exception, but it's not fair to my clients to impose an ordinance on them that hasn't been approved and hasn't been passed, and we don't know what it says. They can only apply based on what the law is now, and that's the law now.

Mr. Abrams: Well, 864 is the law also. Isn't that an Ordinance?

Mr. Meyers: 864 is an Ordinance, right, but the regulatory...yeah, but 864 doesn't say anything about what they need to do or don't need to do, other than the definition of what a Homestay is.

Mr. Abrams: And that would be the fundamental start of what would be the application then? Is the definition of what you are?

Mr. Meyers: I don't know that it has to be...I don't know where it comes from that it has to be in the application. What they're...maybe, maybe we messed up. Maybe. Maybe we should've amended their application and we wouldn't all be having this conversation, but as I analyze it and when I looked at 8.3.2 E-2, which is the section that comes directly after "Use Permit", it says the Planning Commission may impose conditions on the permit involving any of the following matters: location, amount and type and time of construction, type of use, maintenance and operations, so on and so forth. So perhaps it's my mistake. Maybe that's what we should've done, but I thought that the Planning Commission had the power to make those conditions and would so do that given this chicken and the egg situation that we're in. So if we messed up, I would hope, you know, now that we know that and I believe the first time my clients recognized

it was when you pointed it out at the last hearing when your questions to Summer about, I think it was in 25/26 around there of the transcript, where you were asking her about this owner/lessee issue, and then my clients went and started this process to make it happen. Prior to that, when the Planning Director was recommending denial in October, and this goes to what Commissioner Mendonca was asking, they weren't recommending denial because of this owner-occupant/lessee thing, they were saying you're not in a VDA, you're more resort than commercial, you don't comply with the General Plan. We only learned about that through this discussion, and again, perhaps we made the mistake. Well, maybe what I should've done was amended the application and for that I apologize; I thought the Commission had the power to make those conditions.

Mr. Abrams: Thank you. Ian, anything?

Mr. Jung: I mean, that's the very nature of why we're here. When I first started this job, it was like look at the definitions, the definitions are tell-all. And in this case, the way the Planning Department, as the other cases, looked at a Use Permit for a Bed and Breakfast, they looked at it similar to a guest or boarding house, and that's why they applied the Use Permit requirement. If you look at what a Use Permit for a Bed and Breakfast is, now you got to go and resort to the Homestay definition which sets out the parameter of what it is. The Planning Department can't just say no to the application because you folks make the call on the application. Their job is to evaluate the application and apply whether or not it meets the criteria; and in this case, it's a definition and it didn't meet the criteria. The Department's telling them, hey you have the opportunity to come back because you didn't look and get everything, all your ducks in a row, before you applied right. But the reality is, there is going to be a big influx of applications. Are we scared? No. But are we concerned that there are going to be more TVR's trying to convert themselves into Bed and Breakfasts? Yes, because the Council capped TVR uses. And because of that cap and the prohibition, it wasn't the intent to say okay you were caught as an illegal TVR and now let's just convert you to a Bed and Breakfast. There was a goal there. There was a goal for people who lived in their homes, wanting to rent out to transients that come in there and visit their home and visit the island; not to just scratch, find somebody, put them in the house, and then allow them to rent out the home without that primary resident being in that home.

Mr. Abrams: Okay, thank you. That's it.

Chair Anderson: Okay. I would like to just give the Commission one (1) more bite at the apple in terms of asking questions, but because the parties were given ample time for their final arguments, a lot of the questions do sound like they are continued argument. If there's clarification that needs to be on the record in terms of specifically referring to the Findings of Facts or their Conclusions of Law, I would limit questions to that.

Mr. Abrams: I have a question for you. We have...we were given earlier for the 25th Hearing, Proposed Findings of Facts and Conclusions of Law, and the ones we received for today are substantially different? Are they...is this it? Or are both of them it? Or how do we...? I'm not sure.

Chair Anderson: Okay. I'll leave it to our Counsel, but it's my understanding that we...the process was continued and we reopened the evidentiary hearing, so that the submittals that are

before us today, based on the evidentiary hearing that we had, are the ones that we're considering.

Mr. Abrams: Okay, so this was just part of the record coming into it then?

Chair Anderson: Yeah.

Mr. Abrams: And then this is a new one. Okay.

Chair Anderson: Unless there's further information you'd like to (inaudible).

Ms. Higuchi Sayegusa: No, that's correct. So I think at this point, just to clarify at this time with options, we should consider going forward. Today is, (1) under the rules, is to either adopt either one of the parties' Proposed Findings of Fact and Conclusions of Law as is, or you can make revisions to those; either or. The other option is to take action and require the Department or the... whoever the prevailing party to write another written decision and order which conforms to the evidence in the findings that you make. So those are the things that we should consider going forward today. The other thing that I found and looked into today was if we don't come up with a decision today, the permit's going to be issued without conditions because basically the time is up under the Use Permit procedures under the CZO. A decision has to be made today or it automatically gets approved without conditions.

Chair Anderson: Thank you. Okay, is there any further questions for the parties?

Ms. Mendonca: Just so we're clear, we have two (2); we have the Applicant's Proposed Findings of Facts and we have the Planning Department's Finding of Facts. So the initial motion would be either we accept one or the other, or we create our own?

Chair Anderson: I believe what the... so the options are to either (1) adopt the decision and order that was submitted by either one of the parties, so it can be all of one (1) that was submitted or the other, or you can also adopt one (1) of them and make revisions to such document, or we can take action and instruct either our Counsel or one of the prevailing party to draft another decision and order with conditions that we can state orally, but they can memorialize in a future document that they would submit to the Department. If that's correct, from my understanding.

Ms. Higuchi Sayegusa: Yes, that is correct.

Ms. Mendonca: So is the floor open to a motion?

Chair Anderson: So to begin the deliberations we can begin, I believe, with a motion and then we can open it up to discussion either way; to either move forward. I'd leave it to the Commission if there's a particular motion, either to grant or to deny.

Mr. Abrams: Is that before closing? Or do they say closing arguments?

Chair Anderson: They've already...there's no need to make a motion. The final arguments have been made.

Ms. Mendonca: I make a motion to accept the Planning Department's Proposed Findings of Facts.

Chair Anderson: Okay. So to reiterate, Commissioner Mendonca has moved to approve the Planning Department's Findings of Facts, Conclusions of Law and Decision and Order. Is there a second?

Mr. Abrams: Second.

Chair Anderson: Okay, second. And discussion? We'll go around. Is there any discussion?

Mr. Katayama: May I have a few minutes?

Chair Anderson: Yeah.

Ms. Mendonca: May I make a statement while we're waiting?

Chair Anderson: Yes, you may.

Ms. Mendonca: In support of my motion, I can understand the fact that these people are possibly...may have been given the wrong information or got confused, but I support the interpretation for the Homestay. Given the fact the door is still open, that there is a six (6) month period where they can get all of their things in order, I think is just as fair. That is what we've been chosen to do, is to follow the interpretations and make sure we don't set any given precedencies. And if we're taking every case by case, that's the guidelines that we need to follow. It's a home...owner-occupied Homestay. They may have had all of their reasons and their intent, but in support of what Mr. Jung said, they should've had their priorities set first, interpreting the intent of the law and then put in the application; that's my opinion.

Chair Anderson: Okay. Any other discussion?

Mr. Keawe: Yeah, I guess my opinion is similar. I think to demonstrate good faith. I think coming in with an opportunity to make those changes to demonstrate that it was good faith to go ahead and make the changes to live in the unit, or make the changes that would demonstrate they were going to live in the unit.

Chair Anderson: Okay.

Mr. Mahoney: Madam Chair, I...this has been tough for everyone, but I concur with the previous statements. I don't think you can have your foot on three (3) different bases at once, and if one (1) doesn't work, you go to the next one or you have three (3) options. I think at the...I don't think it was prepared correctly from the start, so that's why I concur with the motion.

Chair Anderson: Okay. Mr. Katayama?

Mr. Katayama: I think the challenge for me is becoming comfortable of the basis for a Homestay unit and what is a character of that. Again, in Exhibit A-25 in the evaluation portion, I think that distinction was pretty well drawn in my mind is that the character is either a residence that is welcoming visitors or a dwelling that is accommodating visitor traffic. I think, to me, that is the first issue on the definition between a TVR and a Homestay. I think on a more process matter, I think to apply for a Use Permit under the Homestay definitions, you need to first demonstrate that you meet the character of that use. In other words, i.e. in this case, I think you really need the chicken first, rather than the egg, so you need to establish certain use of the property and that the application will then allow you to change the use. I think, you know again, integration of the resident's portion with the visitor experience is important, as opposed to the delineation of the guests' usage versus the resident's usage. I think all of those elements need to be part and parcel of the application to help me make a determination on whether a Homestay Permit is appropriate in this case, as opposed to a Transient Visitor Use Permit. And I was looking at both the Applicant's Conclusion of Law and I think they've met that burden, but in looking at the Department's Findings of Fact, Conclusions of Law they also state the intent and the...how they define what a Homestay is. I think that's clear in their elements 40 through 44 or 45. So I think it's reconciling where the applicant, I think, has clearly demonstrated that their property can be an element of a Homestay, and yet the Department is saying that you need to demonstrate a certain use prior to even applying for a permit. And that's where I'm sort of having a challenge, so I'm willing to listen to arguments on either side of that from the Commission.

Chair Anderson: I'll speak and then leave it to the Commissioners. I think in terms of the compatibility use, there are different concerns that have been brought... Part of the issue is fitting the definition of a Homestay because we've established that there's a difference between a TVR and a Homestay. A Homestay has a definition, and part of that definition is that it's the owner-occupant...or owner or lessee, and so the real issue is whether or not there is enough in the evidence that was presented that the Applicant is either an owner or lessee, if we're looking at the definition. I think part of that, as well, is looking at why a Homestay is different than a TVR. Part of that is the experience of the...those that will be residing in the property, and I think part of the assumption that if you're going to live in someone's home is that is...that's been their residence whether that...and so that's the question of how long they've been residing there. Whether or not it's a "home" versus a vacation rental, we all know that there's a difference between a place that someone actually resides in or...and has their mementos and can bring that like history and discussion with the residents to bear. So when I look at this, I am concerned about the lack of evidence showing that there is a lessee or an owner. I am concerned that when we start putting the egg before, like we've been using this analogy, that that brings in, you know, potential speculation. If people are coming to the island and say oh I'm going to buy this property and I'll turn it into a Bed and Breakfast, whether that's the intent of allowing Homestays. Whether Homestays really are there to allow for economic incentives for residents and also to create the character and experience for these people...visitors that are coming to the island, and what those expectations are in terms of TVR versus Homestay. So those are my

comments. I'm not...at this time, I don't have a leaning towards either way, so the continued discussion will be helpful.

Mr. Abrams: Madam Chair, my take on this at this point is that in 2008, when they defined Homestay in the TVR Ordinance, the intention was to have an owner-occupant in it and they even gave the option of a lessee. To me, that was the most material thing out of that bill, other than trying to administer the other parts of the TVR Bill. When this application came in, it became apparent to me that the evidence was not developed enough or the application was flawed in terms of the...what was on the application, it actually called for Mr. Ben-Dor's one. When that...I looked through the transcripts and there were the pre-meetings and everything else, and I can see no particular reason why the Planning Department would not have processed that and brought it to a hearing based on what Mr. Ben-Dor was saying at that time; or to have to ask are you going to use a lessee or are you going to use something else. As a result of that, and feeling that the Council has very strongly said that this is the alternative through our General Plan that they passed and through the Ordinance that came down through there, that they want this owner-occupant as part of it and it's in the critical part that there wasn't the proper person in that spot to be the Applicant. It could've been a lessee; it could've been the daughter to be a lessee, but at that point I would've also...and I don't find it here right now...developing enough of the evidentiary as to how that owner-occupant would be able to suffice running an operation without some concerns that were articulated by the Planning Department, in regards to running a transient rental without an owner there. And nothing was built on that to have any kind of foundation for me to feel strongly enough that okay, there's been an owner in this house...you know like if another application that an owner's been in the house, that they've been there for some time, that I can rely on the fact that that's going to be there. Had it been done that way, I think I would've felt completely differently because I do believe that on a lot of the things that they did in terms of the Use Permit, they did fulfill some of the criteria that was laid out in the SMA. I may have felt differently, but at this point right now, I am inclined to go ahead and support Commissioner Mendonca's motion. Thank you.

Chair Anderson: Alright.

Mr. Katayama: Madam Chair, I have a question for our Attorney.

Chair Anderson: Yes, go ahead.

Mr. Katayama: In posed conditions to the Applicant, would it be appropriate to put "residency requirements" for the occupant to establish occupancy?

Ms. Higuchi Sayegusa: I think the threshold question is considering the application and also the evidence that support it to whether it meets the requirements under the law. So applying a condition to kind of meet the initial requirements of the application...or you know, I think that I'm not sure if that may be appropriate at this time.

Mr. Katayama: Well, being Kaua'i, and since we have a lot of chickens and we're using the egg analogy, I mean...I think both Chair Anderson and I, where we are...or my issue is, is that based on the Applicant's testimony, is that...is the application as proposed meeting the requirements

sufficient to demonstrate enough proof for us to allow a permit? Or do you need to have demonstrated that you've met certain of the requirements, or is it prerequisites at this point, for getting a permit?

Ms. Higuchi Sayegusa: I think with the analogy, chicken or the egg, I think there has to be the chicken, too. You have to look at the permit, the application and the evidence that was presented, and determine whether that meets the requirements under the law, which is whether...under the definition of Homestay, you know...whether there was an actual owner occupied or lessee that...if that is contained in the evidence. And I think that's what you folks need to focus on in approving this permit.

Mr. Katayama: Thank you.

Chair Anderson: This is a legal question that I just posed to our Counsel, but I'll pose it to the parties. I'm very sensitive to the fact that this has been a long process the parties have been involved in and understand that the rules require that you have to wait six (6) months, should the petition be...the application be denied. I just have a question that I posed to our Counsel on the record, as well as to Counsel for the parties, is in terms of an amendment if there are any limitations on parties moving to amend their application that it may be...if that's available at this time...if the Commission is allowed to entertain such a motion at this time. If you have a...the Department has any stance on that.

Mr. Jung: Yeah, the Department's position on that would be that, you know, the code anticipates this very situation when an application may not be complete or is not sufficient enough to meet the standards that are set forth in the CZO. So that is the out for them to get their ducks in a row right, or to say have the chicken followed with the egg. For us, we're at the point now where we're on decision making after a full-on evidentiary hearing. If we were to allow for the amendment of an application, then to me that would start the process all over because whatever amendments come through, we would have to then look at what proffered evidence in support of any potential amendment would be, which could bump it right into a Contested Case Hearing again. So from our standpoint, we're past that point where they could've done it, but they didn't do it. We closed the evidentiary portion. Now we're in decision making following final arguments, so that would be the Department's position on the rule set on that, as well as the CZO provision that allows people to submit re-requests, as the Code says, following six (6) months. It was just pointed out to me that the evidence was closed by motion to close that agency hearing portion as well. And I believe if there was any reconsideration of that, we missed the timeframe at the meeting following that.

Mr. Meyers: (Inaudible)

Chair Anderson: Okay, and is there anything further from our Counsel?

Ms. Higuchi Sayegusa: No.

Chair Anderson: Alright. I think part of my training is coming into play because I'm a mediator, so I have a natural tendency to try to look outside the box and look for solutions. If the...I would

like to acknowledge there definitely are questions as to the applicant being a lessee or the applicant being the actual person managing the property, and I understand the oral agreement that the Applicant has with their daughter; it's just a matter of whether the application was properly submitted and had the proper names on it. So if there isn't an avenue to make that change prior to our decision today, then we'll go ahead with the decision making. Okay, any further discussion?

Ms. Katayama: So your comment or your recommendation for the Commission is that there's no avenue to re-amend the application?

Ms. Higuchi Sayegusa: Not at this point.

Chair Anderson: Okay, so we had a motion and a second, and without any further discussion...I'll ask...we'll go ahead and have a roll call vote.

Ms. Higuchi Sayegusa: Commissioner Katayama?

Mr. Katayama: Could you state the motion again please?

Ms. Higuchi Sayegusa: The motion on the table is to adopt the Department's Proposed Findings of Fact, Conclusions of Law and Decision and Order. Okay, Commissioner Katayama?

Mr. Katayama: Aye.

Ms. Higuchi Sayegusa: Commissioner Mendonca?

Ms. Mendonca: Aye.

Ms. Higuchi Sayegusa: Commissioner Abrams?

Mr. Abrams: Aye.

Ms. Higuchi Sayegusa: Commissioner Keawe?

Mr. Keawe: Aye.

Ms. Higuchi Sayegusa: Commissioner Mahoney?

Mr. Mahoney: Aye.

Ms. Higuchi Sayegusa: And Chair Anderson?

Chair Anderson: Abstain.

Ms. Higuchi Sayegusa: And the motion carries.

Chair Anderson: Thank you. The motion carries.

Mr. Jung: Thank you, Commissioners.

Chair Anderson: Thank you. So I ask the Department, you've already submitted your Decision and Order, so this is what will go forward as the decision and the petition is denied as of this date.

Mr. Jung: Thank you.

Mr. Meyers: Thank you.

Ms. Higuchi Sayegusa: Chair, I think that's the remaining matter on the agenda.

On the motion made by Commissioner Mendonca and seconded by Commissioner Abrams to adopt the Department's Proposed Findings of Fact, Conclusions of Law and Decision and Order, the motion carried by roll call vote of 5:0:1.

ANNOUNCEMENTS

Topics for Future Meetings

The following scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, Hawaii 96766 on Tuesday, May 26, 2015.

Mr. Dahilig: Madam Chair, those were all the items...action items for the Planning Commission meeting today. The following scheduled Planning Commission meeting will be held at 9:00 a.m. in this room on Tuesday, May 26, 2015.

ADJOURNMENT

Chair Anderson adjourned the meeting at 2:31 p.m.

CALL TO ORDER

Chair Anderson called the meeting back to order at 2:37 p.m.

Chair Anderson: It was noted this is Tuesday, May 12, 2015. I had previously adjourned the agenda. Inadvertently, there is a remaining item to address. I asked the Commission if there's any objections to my withdrawal of the previous adjournment to address the pending matter on the agenda.

Okay. There being no objections, we'll continue.

NEW BUSINESS

Zoning Amendment ZA-2014-1A: Amendment (Draft Bill No. 2498) to Chapter 8.6 of the Kaua'i County Code (1987), as amended, relating to bus stops for commercial development =
Kaua'i County Council.

Mr. Dahilig: Madam Chair, again my apologies for not bringing this to the Commission's attention. We are on Zoning Amendment ZA-2014-1A, which is also known as Bill 2498, and there is a Director's Report on Page 227 of the...I guess, the digital file for today's meeting. What the Department is asking for, on the prompting of the County Clerk's Office, is to actually ask that this particular bill be handled. What we are aware of is this Bill actually has been sitting in stasis with our Department for quite a while based off of a number of moving parts; one of which was ZA-2014-2 related to another commercial parking standard. On top of that, we have a number of bills related to town core zoning and those types of things up at the Council at this point. So because of the last-in-time principle, we're concerned that if we move forward with the recommendation to adopt this particular Zoning Amendment that has been in stasis for a little while - and again, I want to explain the stasis was agreed upon by the Bill's sponsor at the time at the Council given the other moving parts that were going on - that we would recommend the Commission actually forward the Bill to the County Council, but with a recommendation that it be received for the record. Let me explain that just briefly, the reason why we are asking for a receive for the record is that it is a procedural...I guess, procedural option for the Council to actually...I guess, terminate the bill. The problem is that if we actually recommend a denial of the Bill, it triggers an appeal process where the Council will then have to potentially go through a Contested Case Hearing, and you guys know what that entails. So we're recommending a forward, just a general forward, and a recommendation that it be received for the record.

Mr. Keawe: So we're just...we've received this Bill, and now we're just forwarding it back? That's it?

Mr. Dahilig: Yeah, with a recommendation that they receive.

Chair Anderson: Okay. So do I have a motion from the Commission to forward this to the County Council with our recommendation to receive?

Mr. Mahoney: Move to send to the Council to have it received, as stated by the Chair.

Mr. Keawe: Second.

Chair Anderson: Okay. Any discussion? Seeing none. All those in favor? (Unanimous voice vote) Any opposed? Okay, no opposition. Motion carries. Okay.

On the motion made by Vice Chair Mahoney and seconded by Commissioner Keawe to forward the Bill to the County Council with a recommendation to receive, the motion carried by unanimous voice vote.

Mr. Dahilig: Thank you, Madam Chair. And once again, the final...the next Planning Commission meeting will be held on May 26, 2015 at 9:00 a.m. in this room.

Chair Anderson: Thank you.

ADJOURNMENT

Chair Anderson adjourned the meeting at 2:40 p.m.

Respectfully submitted by:



Darcie Agaran,
Commission Support Clerk

() Approved as circulated (add date of meeting approval)

() Approved as amended. See minutes of _____ meeting.